

541.

DRIVER—SCHOOL BUS—CONTRACT VOID WHEN TERMS OF SECTION
7731-3 IGNORED.

SYLLABUS:

A so-called contract for the employment of a person to drive a school wagon or motor van is void unless the person who contracts for the services of such driver gives a satisfactory and sufficient bond and procures a certificate of good moral character in compliance with Section 7731-3 of the General Code.

COLUMBUS, OHIO, June 19, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads:

“In 1927 the board of education of Washington Township, Hardin County, Ohio, entered into a contract with eight drivers of school wagons for the transportation of pupils. The contract was for a period of five years. At the time the contract was entered into the necessary and requisite legislation was put through by the board at a regular meeting, etc. However, it now develops that the clerk inadvertantly failed to make any record, or at least the minutes show no record, of this meeting. The drivers have operated now for a period of two years and have three years yet on the contract.

It has been revealed that the drivers furnished no bond, nor have they filed a certificate of qualification from the county board of education.

The board now desires to know whether or not contracts which were made at that time are invalid because of not having complied with requirements of Section 7731-3 of the General Code, which reads in part as follows:

‘When transportation is furnished in city, rural or village school districts, no one shall be employed as a driver of the school wagon or motor van who has not given satisfactory and sufficient bond, and who has not received his certificate from the county board of education in the county in which he is employed,’ etc.”

If at the time you mention contracts had been authorized by the Washington Township board of education with school bus drivers, and that action had been followed by the giving of satisfactory and sufficient bond by the drivers, and the furnishing by them of the proper certificate, as is provided by the statute, the mere fact that the clerk had not entered the proceedings of the board with respect to the matter in the minutes would not serve to invalidate the contract so made.

It was held in the case of *Dixon et al. vs. Sub-district No. 5, Liberty Township, Ross County*, 3 Cir. Ct. 517, as stated in the headnotes:

“When two of such directors have met at the usual place of holding meetings, at a regularly called meeting, and they, acting officially, agree, with a qualified teacher to hire him to teach the school of said sub-district for a certain time at an agreed compensation; but neither the clerk of the board or said directors make any entry in the records of said sub-district of their proceedings, such teacher ought not and cannot be prejudiced by the omission or ministerial nonfeasance of the directors or their clerk. He may prove, if he can do so, by competent parol testimony, such official action of said board.”

It is provided by Section 4754, General Code, that the clerk of the board of education shall record the proceedings of each meeting in a book to be kept for that purpose. This provision of the statute, however, is merely directory and if it can be shown that certain proceedings were really had, the fact that the minutes do not show it would not serve to render null and void the actual proceedings had.

It is said by the Supreme Court in the case of *State ex rel. Ach et al., vs. Evans et al.*, 90 O. S. 243, at page 251 :

“Obviously, the proceedings of boards of education of county commissioners, township trustees and the like must not be judged by the same exactness and precision as would the journal of a court.”

However, in the case stated by you in your letter, the so-called contracts spoken of are invalid for other reasons. In an opinion of this department, reported in Opinions of the Attorney General for 1928, at page 2800, the Attorney General, after quoting the portion of Section 7731-3, General Code, quoted in your letter, says :

“Clearly, by reason of the terms of the foregoing statute, a contract for the employment of a person to drive a school bus or motor van is void unless the person who contracts for his services as such driver gives a satisfactory and sufficient bond and procures a certificate of good moral character, as set forth in the statute. No liability would be incurred by the school district on such a void contract. That is to say, no action would lie in behalf of a driver who had performed services in reliance on such a contract, to recover for such services, either on the contract or upon a quantum meruit for the reasonable value of such services.”

The syllabus of the aforesaid opinion reads as follows :

“The driver of a school wagon or motor van who does not give a satisfactory and sufficient bond and who has not received a certificate of good moral character as provided by Section 7731-3, General Code, cannot recover for his services as such driver.

When the driver of a school wagon or motor van is employed by a board of education otherwise than in strict conformity with the provisions of Section 7731-3, General Code, and renders satisfactory service as such driver in reliance upon such contract and is paid therefor, in the absence of a showing of fraud or collusion in the transaction, no recovery can be had on behalf of the school district for the moneys so paid.”

I am of the opinion, therefore, in specific answer to your question, that the so-called contracts referred to are invalid because of the fact that the terms of Section 7731-3 have not been complied with.

Respectfully,
GILBERT BETTMAN,
Attorney General.