

properly executed bond of the Continental Casualty Company of Chicago, Ill., in the penal sum of \$5500.00.

As a part of the files relating to the execution of this contract, you have submitted the certificate of the Director of Finance showing that there is a sufficient unencumbered balance in the proper account set up in the allowance by the Emergency Board of the amount of money requested for the purposes of this contract.

It further appears from the files submitted that plans and specifications for this improvement were properly prepared and approved, that notice to bidders was properly given and that upon return of the bids same were duly tabulated and the contract awarded to the contractor above named.

It further appears from proper certificates filed with you and made a part of the files relating to this contract that the Continental Casualty Company has complied in all respects with the laws of Ohio and is authorized to transact business in this state; and that said contractor, as an employer, has complied with the requirements of the Workmen's Compensation Law.

Upon examination of said contract and bond, I find the same to be in legal form and the same are herewith approved, as is evidenced by my approval endorsed on said contract, which, together with said bond and your files relating to this contract, are herewith returned to you.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1967.

TUITION—DEDUCTION THEREFROM OF AMOUNT OF SCHOOL TAX PAID BY NON-RESIDENT HIGH SCHOOL PUPIL UPON PROPERTY LOCATED WITHIN SCHOOL DISTRICT ATTENDED APPLICABLE WHERE DISTRICT OF PUPIL'S RESIDENCE CHARGED WITH TUITION.

SYLLABUS:

The provisions of Section 7683 of the General Code, providing for a deduction from the tuition of a non-resident high school pupil of the amount of school tax paid by such pupil or his parent, upon property owned and located within the school district attended, is applicable in cases where the district of the pupil's residence is charged with the tuition by force of Section 7747 of the General Code, as well as in those cases where the pupil or parent is chargeable with such tuition.

COLUMBUS, OHIO, December 8, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent request for my opinion concerning the interpretation and application of Section 7683 of the General Code, which provides, in substance, that when a youth, between the ages of sixteen and twenty-one years, or his parents own property in a school district in which he does not reside, and he attends the schools of such district, the amount of school taxes paid on the property in that district, which he or his parents own, shall be credited on his tuition.

I find that there are two opinions of former Attorneys General, which deal with this subject. The first of these opinions will be found in the Annual Report of the Attorney General for 1912, at page 1421. The syllabus of this opinion reads as follows:

"The provisions of Section 7683 of the General Code, providing for a deduction from the tuition of a non-resident high school pupil, of the amount of school tax paid by such pupil or his parent, upon property owned and located within the school district attended, referred to cases where the pupil or parent were themselves chargeable with such tuition.

Said section has no application to Section 7747 of the General Code, under which the board of education of such pupil's residence is now made liable for such tuition.

In this case, therefore, the amount of said school tax may not be deducted."

The other opinion dealing with the same subject, will be found in the Opinions of the Attorney General for 1917, page 2277. The syllabus of this opinion reads as follows:

"A rural board of education which is liable for the payment of tuition under Section 7747, General Code, for a pupil who attends a high school in an adjoining district, can take advantage of Section 7683, General Code, on the ground that the parent of the pupil or such pupil owns property in the district maintaining the high school to which the child is sent."

It will be observed that the second of these opinions in effect, overrules the former. The 1917 opinion is predicated to some extent, on a dictum of the Supreme Court in the case of *State ex rel. Nimberger, et al., vs. Bushnell, et al.* 95 O. S., 177, 185, wherein the following language appears:

"Any district which is required to pay the tuition of a pupil resident therein, but attending school in another district is entitled to the benefits of the provisions of Section 7683 of the General Code, and should be credited with the amount of school taxes paid upon property by the pupil or his parent in the district wherein is located the high school attended. Such credit should be made no matter who pays the tuition."

Although the expression of the Supreme Court as quoted above, is pure dicta, and was not necessary to the decision of the case in question, it is of sufficient weight to be controlling in the interpretation of this statute, and until the Supreme Court directly passes upon the question to the contrary it should be followed.

I am therefore of the opinion that we should follow the 1917 opinion and permit the crediting of school taxes paid by a pupil or his parent in any school district to tuition that may be charged against such pupil, regardless of whether or not the pupil or parent is required to pay the tuition or the school district in which the pupil resides.

Respectfully,

JOHN W. BRICKER,

Attorney General.