

file in the office of the county commissioners, and the time within which bids will be received. The county commissioners may let the work as a whole or in convenient sections as they may determine. They shall award the contract to the lowest and best bidder. The contract shall be let upon the basis of lump sum bids, unless the commissioners order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis."

Sec. 6945-1. "If the estimated cost of the improvement is two hundred dollars or less the contract may be let without competitive bidding. If the estimated cost is more than two hundred dollars, but does not exceed five hundred dollars, the contract may be let at competitive bidding, after advertisement, posted in the office of the county commissioners and in at least three other public places in the county for ten days prior to the letting."

Nowhere in the above sections of the Code does it state that bids must be received for both materials and labor. In fact, it would appear that the legislature recognized, in enacting these sections, that the county commissioners might only need to advertise for labor for a road improvement, for Sections 7200, 7203 and 7214, General Code, which as my predecessor has pointed out, give ample authority for the purchase alone and storing of materials, were first passed as part of the Cass Highway Act, which first enacted Sections 6906 et seq., General Code, in 1915 (see the act in 106 O. L., 574-666, entitled: "To provide a system of highway laws for the State of Ohio, and to repeal all sections of the General Code, and acts inconsistent therewith."). Certainly the legislature could not have authorized the purchase of materials without regard to any designated improvement and then require that bids be received for labor and materials whenever an improvement is undertaken. Such a construction of the law would limit the meaning of sections 7200, 7203, and 7214, General Code, which is unwarranted.

Based on the foregoing, I am of the opinion that when county commissioners have already purchased road materials without reference to any designated road project, and later decide to construct a road, they are legally authorized to advertise for and accept bids for the labor only to be performed on a designated road.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3171.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE SEPARATION  
AT CANAL WINCHESTER, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, April 21, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

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3172.

BOARD OF EDUCATION—TRANSPORTATION OF CRIPPLED CHILD  
UNDER TERMS OF SECTION 7755-3, GENERAL CODE DISCUSSED—  
INAPPLICABILITY OF PROVISIONS OF SECTION 7731-3, GEN-  
ERAL CODE—EXCEPTION NOTED.

## SYLLABUS:

1. *By force of Section 7755-3, General Code, a mandatory duty is imposed on boards of education to provide transportation to school for children within the district who are so crippled as to be unable to walk to the school.*

2. *A board of education may lawfully pay the parents or persons in charge of children so crippled that they are unable to walk to school, for transporting those children to school, in lieu of furnishing the transportation by the board itself.*

3. *A parent or person in charge of a child who transports that child to school upon the failure of the board of education to provide proper transportation therefor is not required to be certificated or bonded in accordance with the provisions of section 7731-3, General Code.*

4. *The terms of section 7731-3, General Code, have no application to the transportation of crippled school children made necessary by the provisions of section 7755-3, General Code, unless those children are conveyed with other school children in the regular motor van or school wagon provided by the board for the transportation of school pupils generally.*

COLUMBUS, OHIO, April 22, 1931.

HON. V. F. ROWLAND, *Prosecuting Attorney, Cadiz, Ohio.*

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

“I desire your opinion on the following section and in view of the following facts G. C. Section 7755-3 has the following sentence ‘this section shall apply whether there is a special class for crippled children to which he is assigned or not.’ The Cadiz School Board has a child who is so crippled that he cannot walk to school and they have been paying for the transportation of same to and from school. Is this proper under Section 7755-3?

Second question: If such be the case, is the man driving the car used for transportation of the child required to give bond as in Section 7731-3 G. C., or any other section?

In the present case this particular child is the only one that the Cadiz School Board is furnishing transportation for because of disabilities.”

Section 7755-3, General Code, reads as follows:

“In case a child is so crippled that he is unable to walk to the school to which he is assigned the board of education of the district in which he resides shall provide for his transportation to such school. This section shall apply whether there is a special class for crippled children to which he is assigned or not. In case of dispute whether the child is able to walk to school or not, the district health commissioner shall be judge of such ability.”

Section 7731-3, General Code, reads as follows:

“When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position.

Provided, however, that a county board of education may grant such certificate to a boy who is at least sixteen years of age and who is attending high school. Any certificate may be revoked by the authority granting same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver's contract shall be thereby terminated and rendered null and void."

It will be observed from the terms of Section 7755-3, *supra*, that a mandatory duty is imposed upon a board of education to provide transportation to school for a child who is so crippled that he is unable to walk to the school to which he is assigned. This duty rests upon the board whether there is one child in the district coming within the terms of the statute or several.

The statutes do not definitely state how school transportation is to be provided in any case, whether the transportation be of crippled children or others. Considerable discretion is left to a board of education to determine the manner of providing this transportation. Many boards of education own their own vehicles and hire their own drivers, in providing regular school transportation, others let out the work by contract. In either case, however, the terms of section 7731-3, General Code, must be complied with and the driver of a school conveyance such as is spoken of in section 7731-3, General Code, owned either by the board or a contractor, must provide himself with the certificate spoken of in the said statute and give a bond as provided for therein.

It is my opinion, however, that section 7731-3, General Code, is not applicable when crippled children are to be transported. Said section 7731-3, General Code, was enacted by the General Assembly as a supplementary section to section 7731, General Code, which latter section provides for the suspension of schools and the assignment of the children attending those suspended schools to other schools, whereupon, they shall be transported under certain conditions. It was enacted as a part of an act of the legislature entitled:

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"AN ACT

To amend sections 7730 and 7731 of the General Code, and to add supplemental sections 7731-2, 7731-3, 7731-4, 7749-1 and 7749-2 to the General Code, relating to the suspension of schools, the transporting of the pupils, or the boarding of pupils in lieu thereof." 109 O. L., 288.

The provisions with reference to the transportation of crippled children were enacted as a part of an act amending certain sections of the General Code relating to special classes for the blind, deaf and crippled and the transportation and tuition of such children. 109 O. L., 257.

It seems clear that the legislature did not intend the provisions of Section 7731-3, General Code, to apply to the transportation of crippled children.

Specific authority is extended to boards of education by section 7731-4, General Code, to pay the parent or person in charge of certain children for the transportation of those children, when an obligation rests on the board to transport the children, in lieu of the board's furnishing the transportation itself. Where the parent or person in charge of a child transports the child the terms of section 7731-3, General Code, are not, in my opinion, applicable.

While there is no specific authority for a board of education to pay the parent or person in charge of a crippled child for transporting the child, I am of the opinion that inasmuch as a board of education is required, by force of section 7755-3, General Code, to provide transportation for a crippled child, the parent or

person in charge of such child would be justified in transporting the child, if the board failed to provide the transportation, and recovery could be had against the board for the reasonable value of the transportation so furnished by the parent or person in charge of the child.

Under such circumstances a quasi-contractual obligation arises in favor of the person furnishing the transportation and against the school board upon which the obligation rested to furnish the transportation which quasi-contractual obligation must be recognized.

A very similar situation was passed upon by the Supreme Court in the case of *Sommers v. Board of Education*, 113 O. S., 177. At that time school boards were required by statute to furnish high school facilities within four miles of their homes or provide transportation to a high school or board and lodging near a high school. A certain school board had failed in this respect, the parent furnished the transportation and sued the board for the reasonable value thereof. The court said, on page 183 of the last-mentioned volume:

"The parent has discharged the obligation first of the local school board and next of the county school board. Moreover, this duty was imposed upon the board partly for the parent's benefit, as well as for the benefit of the children and of the public. As the performance of that duty by another is a benefit to the school boards, when he performed the duty the parent conferred a benefit upon the school boards. For this benefit the school boards ought in justice to pay, and hence the intervenor, that is, the parent who performed the duty, is entitled to compensation therefor."

When the parent or person in charge of such a child furnishes the transportation the provisions of section 7731-3, General Code, need not in my opinion, be complied with. I am also of the opinion that the terms of section 7731-3, General Code, are not applicable where the transportation of crippled children as provided by Section 7755-3, General Code, is involved unless those children are conveyed in the regular motor van or school wagon provided by the board for the transportation of school children generally.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3173.

APPROVAL, BONDS OF VILLAGE OF MACEDONIA, SUMMIT COUNTY,  
OHIO—\$18,000.00.

COLUMBUS, OHIO, April 22, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3174.

APPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM J. O'BRIEN  
AND ELLA CROWE IN UNION TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 23, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*