if the parent or person in charge of such child, furnishes the transportation.

2. If a board of education determines that it is impractical and unnecessary to operate a school bus to within one-half mile of the residence of a school pupil, who is entitled to transportation to school, or the private entrance to such residence, the board cannot be compelled in an action in mandamus to operate the bus to within such one-half mile of the residence of the pupil, or the private entrance thereto, but unless the school conveyance is operated to within one-half mile of the residence of a school pupil, or the private entrance thereto, transportation as contemplated by the law is not being furnished."

Based on the foregoing discussion, I am of the opinion, in specific answer to your questions:

First, in accordance with the terms of Section 7731-3, General Code, a county board of education is not empowered to issue a certificate to a girl authorizing her to drive a school wagon or motor van.

Second, in the absence of an abuse of discretion on the part of the board of education making the assignment, an elementary school pupil is required to attend the school to which he is assigned by the board of education of the district of his residence, unless the school is more than one and one-half miles from his home and there is a nearer school either within or without the district, or pay his own tuition in the school of another district which he chooses to attend and which is willing to receive him.

Third, if circumstances are such that a board of education is required under the law to furnish transportation for a pupil attending the public schools, the board is required, in furnishing such transportation, to cause the conveyance to pass within one-half mile of the residence of each of the pupils to be transported, or the private entrance to such residence, else transportation as the law contemplates, is not being furnished and the parent or person in charge of the pupil may furnish transportation for the pupil and recover from the board of education for such transportation in accordance with Section 7731, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2791.

SENTENCE OF PRISONER—CONVICTED OF TWO OR MORE FELONIES SERVING SENTENCES CUMULATIVELY BY ORDER OF COURT CONTINUOUS TERM—WHEN ELIGIBLE FOR PAROLE.

SYLLABUS:

Where one is convicted of two or more separate felonies and the court orders said sentences to be served cumulatively, by the terms of Section 2166 of the General Code, the prisoner shall be held to be serving one continuous term and will not be eligible to parole until he has served the aggregate of the minimum terms.

COLUMBUS, OHIO, January 2, 1931.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"The Board of Clemency in this department has requested your official opinion as follows:

The specific case under advisement is No. 57,864, Ohio Penitentiary. This prisoner was received November 28, 1927, under two sentences, case No. 4328 and No. 4457; the sentence in each case being from two to thirty years. The journal entry in case No. 4457 reads in part as follows: 'The court does hereby sentence said ---------- to be imprisoned and confined in the Ohio Penitentiary at Columbus, Ohio, for the period of from two (2) to thirty (30) years and that said term of imprisonment of two (2) to thirty (30) years last referred to shall commence at the expiration, parole or termination of the sentence imposed by this court on said defendant on the 7th day of November, A. D. 1927, in case No. 4328 in this court.'

The prisoner was started on his sentence in case No. 4328 by the prison officials and his papers were marked 'New Sentence to Follow'. At the end of the two year period this prisoner was brought before the Board of Clemency for hearing upon the recommendation of the warden and chaplain. Obviously, the prisoner was not eligible for parole at this time as he had not officially served any part of his sentence in case No. 4457. If the board had any authority to hear this case at this time the only possible action was a continuous or a final release to start the prisoner on his new sentence. Our doubt in this matter is brought about by the language of Section 2166 of the General Code. The pertinent provision in this section is the following: 'If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced and, for the purposes of this chapter he shall be held to be serving one continuous term of imprisonment.'

It would seem,under a reasonable construction of the above provisions, that the proper sentence of the prisoner in the instant case would be obtained by adding together the minimum and maximum, making the sentence four to sixty years. Under this construction the above prisoner could have his first hearing for parole at the end of the four year minimum.

Since this is a situation that arises rather frequently and affects a case now pending before the board, we would appreciate as early a reply as is convenient."

In view of the facts stated in your communication, it is evident that the sentences under consideration shall run consecutively or cumulatively as contradistinguished from sentences which are to run concurrently. It is the theory of cumulative sentences that the prisoner shall serve all of the sentences and that serving of one will not in anywise diminish the others. However, Section 2166, which you quote, expressly provides that the prisoner shall be held to be serving one continuous sentence, and that such term may equal but not exceed the aggregate of the maximum of all the terms. That is to say, unless the Ohio Board of Clemency sees fit to parole the prisoner or terminate the sentence, the combined maximum terms will have to be served. Furthermore, by the express terms of the statutes, one may not be paroled until the end of the minimum term. Therefore, in order to carry out the intent of the statutes in the case of two or more cumulative sentences, it will be necessary to add the minimum terms and the total will be the number of years the prisoner must serve before he is eligible for parole.

Without further discussion, it is my opinion that the conclusion you suggest in your communication, to the effect that the prisoner you describe must serve four years before he is entitled to a hearing for parole, is the proper view. This conclusion is the only logical view taking into consideration that the prisoner is re-

garded as serving one continuous term together with the mandate that the minimum term must be served before one is eligible for parole.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2792.

BOND ISSUE—AUTHORIZATION VOTED BY ELECTORS—DECISION OF BOARD OF EDUCATION NOT TO ISSUE—MAY THEREAFTER RECONSIDER.

SYLLABUS:

1. *The authorization of an issue of bonds by the electors of a subdivision places no mandatory duty upon the taxing authority to issue the bonds so authorized or any part thereof.*

2. *In the event the taxing authority, after the question of issuing bonds has been favorably voted upon by the electors, determines that the issuance of such bonds is not necessary, there is nothing to preclude such taxing authority from thereafter determining that their issuance is necessary and proceeding under the provisions of Sections 2293-25 to 2293-29, inclusive, of the General Code.*

COLUMBUS, OHIO, January 2, 1931.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

> "I would like your opinion on the following statement of facts:
>
> At the November election of this year, the Orange Township Rural School District voted a bond issue to build a school building in the amount of $31,000. After the vote a resolution to issue bonds after submission to the electors under Section 2293-2 and subsequent sections was submitted to the board and upon a special meeting this resolution was voted down by said board.
>
> Now, we desire to know just what is the status of this proposed bond issue. Does the voting down of the bond issue by the board after it was voted for by the electors kill the bond issue? If so, is it permanently dead or may it be revived by a subsequent board?
>
> The board of education owing to the loss of certain territory and the smallness of their tax duplicate have deemed this action advisable. Is this power discretionary with the board or is it a mandatory duty? In either event, what is the status of the proposed bond issue and improvement?"

Section 2293-19 of the Uniform Bond Act provides that "the taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue." This section and Sections 2293-20 to 2293-23, inclusive, relate to the detailed steps to be taken in submitting to the electors the question of issuing bonds. Section 2293-23, General Code, sets forth the form of ballot and further provides as follows:

> "If fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authority of such subdivision shall have authority to