

the deed has been filed for record with the County Recorder. This imports not only the execution of the deed by the grantors therein named, but the delivery thereof and, to some extent, the acceptance of the deed by the State, through some person or persons acting on its behalf. Nevertheless, it is suggested that if the Board of Control has not already done so, it should adopt a formal resolution accepting this deed of conveyance subject to the conditions and reservations therein contained, and forward a copy of such resolution to Hon. Guy B. Findley at Elyria, Ohio. I am herewith returning with my approval the abstract of title and warranty deed hereinabove referred to.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1737.

AGE AND SCHOOLING CERTIFICATE — WHERE MINOR WORKS ABOUT PARENTS' FARM—UNDER SECTION 7765 G. C. SUCH WORK DOES NOT REQUIRE SUCH CERTIFICATE—TYPE OF WORK THAT REQUIRES SUCH CERTIFICATE—WHEN MINOR MAY BE EXCUSED FROM SCHOOL ATTENDANCE.

SYLLABUS:

1. *Work about the parents' farm by a minor of compulsory school age, in the absence of any facts showing that in the performance of said work on the farm the minor son will be employed by, or in the employment of, the parents, is not such work or employment that requires an "age and schooling certificate" as provided for in Section 7765 General Code.*

2. *The superintendent of schools cannot refuse to issue an age and schooling certificate, if in accordance with the provisions of Section 7766, General Code, satisfactory proof is presented to him that the child is over sixteen years of age, has satisfactorily passed a test for the completion of the work of the seventh grade, and the contemplated employment is not prohibited by any law regulating employment of children, and that all requirements set forth in Section 7766-1, General Code, have been complied with, providing however, that the employment or work for which the age and schooling certificate is requested is such work or employment that requires an age and schooling certificate.*

An application by a father for an age and schooling certificate for

his minor child for the reason that the services of the minor are necessary in the operation of the parents' farm, because of the illness of the mother, is not a request for an age and schooling certificate for work or employment that requires an age and schooling certificate.

For the performance of such work about the parents' farm by a minor of compulsory school age, during the hours when the public schools of the district in which the minor resides, are in session, it is necessary that such minor be excused from attendance as provided in Section 7763, General Code.

COLUMBUS, OHIO, January 10, 1938.

HON NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilcad, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

"Sections 7762, et seq., of the General Code, are devoted to the question of compulsory education. The particular question which came to me today does not seem to be answered. I therefore respectfully ask your informal opinion.

"S" is 16 years of age; he is enrolled in the 8th grade of the "C" village school. His father desires to obtain an age and schooling certificate for the boy so he can work at home. The father contends that the illness of the mother is the chief reason for wishing such certificate. The boy is not mentally deficient.

I am informed that Dr. Sutton, of the office of the Director of Education, wrote to superintendents last spring, stating that work on a father's farm was not such regular employment as to come within the purview of the statute.

Queries:

1. Is work on the farm of the pupil's parents such employment as the statute intends?

2. Where "S" 's father has made his application for an age and schooling certificate under oath, and a physician's certificate is provided, how far can the school superintendent go in granting or refusing such certificate?

It has always been my understanding that the compulsory school laws were for the purposes, with reasonable exceptions, of keeping pupils in school."

Except for irregular employment, a pupil may not be employed or enter into an employment during hours in which the public school of

the district in which the pupil resides is in session, unless the pupil has an age and schooling certificate as required by Section 7765, General Code. Section 7765, General Code, provides in part, as follows:

“Excepting as provided in Section 7765-2 of the General Code, no minor of compulsory school age shall be employed or be in the employment of any person, firm or corporation in any of the occupations mentioned in Section 12993 of the General Code unless such minor presents to such person, firm or corporation, a proper age and schooling certificate, as a condition of employment. No minor of compulsory school age shall be employed or be in the employment of any person, firm or corporation in any other occupation during hours when the public schools of the district in which he resides are in session, unless such minor presents to such person, firm or corporation such age and schooling certificate as a condition of employment. Such employer shall keep the same on file in the establishment where such minor is employed or in the office of the business or in the residence in or about which such minor is employed for inspection by attendance officers, probation officers, the superintendent of schools, or inspectors or other employees of the industrial commission or the board of state charities of Ohio, or representatives of the district board of health or state department of health.”

Section 12993, General Code, provides as follows:

“Unless he either is employed in irregular service as defined in Section 7765-2, General Code, or is holder of an age and schooling certificate issued under Section 7766-3, Section 7766-4, or Section 7766-9, General Code, no child under sixteen years of age shall be employed, permitted or suffered to work in or about any (1) mill, (2) factory, (3) workshop, (4) oil-well or pumping station, (5) cannery or bottling or preserving establishment, (6) mercantile or mechanical establishment, (7) tenement house, (8) garment making or dress making or millinery establishment or working room, (9) store, (10) office, (11) office building, (12) laboratory, (13) restaurant, (14) hotel, boarding house, or apartment house, (15) bakery, (16) barber shop, (17) bootblack stand or establishment, (18) public stable, (19) garage, (20) laundry, (21) place of amusement, (22) club, (23) or as a driver or chauffer, (24) or in any coal yard or brick, lumber, or building material yard, (25) or in the con-

struction or repair of buildings, (26) or in the transportation of merchandise; nor if a boy in the personal delivery of messages. No female under twenty-one years of age shall be employed in the personal delivery of messages.

No child under sixteen years of age shall be engaged in school and employed more than nine hours altogether in any one day and no child under fourteen years of age shall be employed more than four hours in any one day."

It is to be observed that work on a farm is not included within the occupations listed in Section 12993, supra, and that, the question presented is: Is a minor whose father contends his services are necessary in the operation of his farm, because of the illness of the mother, amenable to the provision contained in Section 7765, supra, that "no minor of compulsory school age shall be employed or be in the employment of any person, firm or corporation in *any other occupation* during hours when the public schools of the district in which he resides are in session, unless such minor presents to such person, firm or corporation such age and schooling certificate as a condition of employment."

Therefore, the first question that must be determined is: does the language, "shall be employed or be in the employment of any person, firm or corporation," include a minor whose father contends his services are necessary in the operation of his farm, because of the illness of the mother.

I am unable to find an opinion rendered on this particular question at any time by any Attorney General. However, in Opinions of the Attorney General for 1922, Volume I, page 554, in discussing the question of prosecutions instituted under the provisions of Section 12978, General Code, at page 561, the then Attorney General stated:

"It seems clear from an examination of the foregoing sections that since the adoption of the amendments of 1921 to the compulsory education law, the employment of a child under fourteen is simply illegal, regardless of the character of the employment in which he is engaged. Doubtless, *this section is not intended to regulate, and does not regulate or impose conditions on purely domestic employments within the family relation; so that a parent or person who stands in the place of a parent, may not be amenable to such laws for employing his own children; but it is equally clear that the statutes do apply to commercialized and industrial employment of the kind under investigation.*" (Italics the writer's).

The natural duty of parents to provide their children with suitable shelter, food, and clothing until they are able to support themselves, is enjoined by the statutes of Ohio. (30 O. J., 593).

It is stated in 30 Ohio Jurisprudence, page 570:

“By the common law in Ohio, as elsewhere it was held that a father who was providing a home for his minor children and supporting them had, by way of compensation, a right to their services and earnings during their minority, and that, the father might require that the services be rendered in his home or his business, or to a third person for him, the earnings being properly collectible by the father.”

The reason for this rule is well expressed in the case of *Wm. Gringer, vs. John Heinlein, et al.*, 29 Weekly Law Bulletin, page 339, wherein at page 340, it was stated:

“The right of a father to the services and earnings of minor children arises out of his obligation to support and educate them as an incident to that duty. The right and the duty are reciprocal and compensatory.”

It therefore can be said that where a minor performs services for his parents on the farm, and no facts exist which show that the parents have divested themselves of their right to the minor's services during his minority, by emancipating said minor, that the relationship of employer and employe does not exist between father and minor; and that the minor cannot be said to “be employed” by, or “be in the employment of” his father.

It is to be noted that a situation can exist where the relationship between father and son is that of employer and employe. Such a situation would arise where a father releases his right to claim the minor's services and earnings, permitting the child to earn his own way, and to spend or save his earnings. Such a case existed in the often cited case of *Bencr vs. Edington*, 76 Iowa, 105, where the son, a minor, worked on the farm on which the family lived. In that case the family occupied the farm for the benefit of the children, and the children, or part of them, had been formally emancipated by the parents, and those not emancipated had with the consent of their parents labored upon the farm for their own advantage, and not for their parents, and the court held emancipation of the children could be inferred.

It may be contended that since Section 7765-1, General Code, provides that the parent or guardian of a child of compulsory school age

shall be required to secure and keep on file the age and schooling certificate of his child or ward, if such child or ward is employed by him, that the provisions of such statute would be applicable in the case of a minor working on the farm of his father. It is my opinion that the provisions of this section refer only to a case where the minor is "employed" by, or, "in the employment" of the father and the relationship of employer and employe exists.

By the provisions of Section 7762-6, General Code, every child between six and eighteen years of age who is not employed on an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction must attend a public, private, or parochial school.

By the provisions of Section 7763, General Code, a mandatory duty is imposed upon every parent, guardian or other person having charge of any child of compulsory school age who is not employed on an age and schooling certificate and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction to send such child to school unless such attendance is excused by certain authorities for certain causes and under certain prescribed conditions, among which is the following:

"2. The department of education may adopt rules and regulations authorizing the superintendent of schools of the district in which the child resides to excuse a child over fourteen years of age from attendance for a future limited period for the purpose of performing necessary work directly and exclusively for his parents or legal guardians."

Parents have the right to demand the services of a minor child for the performance of work "directly and exclusively" for the benefit of the parents, so long as the performance of such work does not interfere with said child's attendance at school.

It is obvious from the language used in paragraph (2) of Section 7763, supra: that it was the intention of the legislature to provide that in a situation where the provisions of Section 7765, supra, were not applicable and an age and schooling certificate could not be obtained, to authorize the department of education to excuse a child over fourteen years of age from attendance at school for a limited period of time in a situation where it is necessary for such pupil to assist his parents in "work directly and exclusively for his parents" and relieve the parents from liability for a failure to comply with the mandatory duty of sending such child to school, during such "limited period of time"; that, the provisions in paragraph (2) of Section 7763, supra, refer to such work

that parents are entitled to demand from a minor child, by reason of parental relationship and therefore, does not include any work performed by a minor child for his parents because of a contract of employment existing between the minor child and the parents.

The work described in your communication is that of working on a farm. In the absence of any other facts, when such work is performed by a minor son, it does not arise by reason of a contract of employment existing between minor child and parents; it is the type of work that is "directly and exclusively" for the benefit of the parents, and which the parents can demand that the son perform if an excuse from attendance at school is obtained as provided for in Section 7763, *supra*. As stated hereinabove, the facts do not show that in the performance of said work about the farm the son will "be employed" by, or "be in the employment" of the father, and therefore, said work is not such employment that requires an "age and schooling certificate," as provided for in Section 7765, *supra*.

In answer to your second question it must be observed that, Section 7766, General Code, provides that an age and schooling certificate may be issued by the superintendent of schools upon satisfactory proof that the child is over sixteen years of age, has satisfactorily passed a test for the completion of the work of the seventh grade and that the contemplated employment is not prohibited by any law regulating employment of children, upon the fulfillment of certain requirements set forth in Section 7766-1, General Code.

Sections 7763-4, 12979 and 12980, General Code, make provisions for appeal and penalty in situations where an age and schooling certificate has been refused.

Section 7763-4, General Code, provides in case such superintendent refuses upon request to grant an age and schooling certificate as provided in Section 7766, General Code, an appeal may be taken to the judge of the juvenile court of the county.

Sections 12979 and 12980, General Code, provide as follows:

"Sec. 12979. Any person charged by law with issuance of age and schooling certificates who fails or refuses upon request to issue such certificate or age and pre-employment card or overage certificate contrary to any of the provisions of the laws relating to the issuance of such certificates or cards, shall upon conviction be fined not less than twenty nor more than fifty dollars."

"Sec. 12980. Whoever, being an officer of a board of education or a superintendent, principal or teacher of a public, private or parochial school or a juvenile examiner refuses or ne-

glects to perform a duty imposed upon him by the laws relating to compulsory education and the issuance of age and schooling certificates or declines to give the information necessary for the execution of these laws shall upon conviction be fined not less than twenty nor more than fifty dollars. Continued refusals to perform the duties or give the information shall constitute additional violations of the statutes relating to compulsory education and the issuance of age and schooling certificates.”

It is obvious that if all the conditions imposed by Sections 7766 and 7766-1, supra, are complied with and fulfilled by the pupil and employer, as provided therein, the superintendent is legally bound to issue the age and schooling certificate. It is a ministerial act imposed upon the superintendent to be performed by him upon the performance of certain acts in a prescribed manner by pupil and employer.

In the case of State of Ohio, ex rel., *Trauger vs. Nash, Governor*, 66 O. S. 612, the Court quoted the definition of a ministerial act, as defined in *Flourncy vs. Jeffersonville*, 17 Ind., 169, as follows:

“A ministerial act may, perhaps, be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done.”

Although since 1912, Section 7766, supra, has been amended as to age, grade requirements, etc., this statute in form and substance is substantially the same as in 1912. In an opinion rendered by a former Attorney General, contained in the Annual Report of the Attorney General for 1912, Volume I, page 500, it was held:

“Under Section 7766, General Code, the superintendent of schools or the person authorized by him when the parent so demands, is legally bound, if all the conditions imposed by said section are complied with to issue the age and schooling certificate therein provided to a child, upon satisfactory proof that such child is over fourteen years of age and passed a satisfactory fifth grade test in the studies enumerated in Section 7762 and is engaged in some regular employment, unless a ‘reasonable doubt exists in the mind of the superintendent or the person authorized by him that the child has not reached the normal development of a child of its age and is not in sound

health and physically able to perform the work which it intends to do.”

It is to be observed: that, Section 7766, *supra*, refers to “contemplated employment” not prohibited by law; and that, by the provisions of Section 7766-1, General Code, before the issuance of an age and schooling certificate the superintendent must receive a written pledge or promise of the employer to employ the child, permit him to attend school and return the certificate in cases of withdrawal or dismissal. By the language of these two sections it is clear that an age and schooling certificate to a pupil is issued for a certain definite and specific employment. In other words, before a superintendent is required to take any action on an application, provision must have been made for the employment of the minor by a person, firm or corporation.

It therefore can be said that the superintendent of schools cannot refuse to issue an age and schooling certificate if, in accordance with the provisions of Section 7766, *supra*, satisfactory proof is presented to him that the child is over sixteen years of age, has satisfactorily passed a test for the completion of the work of the seventh grade, and the contemplated employment is not prohibited by any law regulating employment of children, and that all requirements set forth in Section 7766-1, General Code, have been complied with, providing however, that the employment or work for which the age and schooling certificate is requested is such work or employment that requires an age and schooling certificate.

In the specific case herein, if the application for the age and schooling certificate is for work to be performed by the minor son, for his parents about the farm, such work is not for the performance of such employment for which an age and schooling certificate may be issued, and therefore the superintendent may refuse to grant the same.

Therefore, in specific answer to your question it is my opinion that:

1. Work about the parents' farm by a son of compulsory school age, in the absence of any facts showing that in the performance of said work on the farm the minor son will be employed by, or in the employment of, the parents, is not such work or employment that requires an “age and schooling certificate” as provided for in Section 7765, General Code, the relationship of employer and employe not being present.

2. Where “S” father has made application for an age and schooling certificate under oath, and a physician's certificate is provided, the school superintendent may refuse to grant an age and schooling certificate, if the application shows that in the performance of the work on

the farm by the minor son he will not be employed by, or in the employment of, the parents.

Respectfully,
 HERBERT S. DUFFY,
Attorney General.

1738.

APPROVAL—BONDS CUYAHOGA COUNTY, OHIO, \$63,000.00,
 PART OF ISSUE DATED JANUARY 1, 1938.

COLUMBUS, OHIO, January 10, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
 GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$63,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above county dated January 1, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of January 6, 1938, being Opinion No. 1719.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,
 HERBERT S. DUFFY,
Attorney General.

1739.

APPROVAL—CONTRACT AND BOND, DIRECTOR OF PUBLIC WORKS FOR DEPARTMENT OF PUBLIC WELFARE WITH THE GINN ELECTRIC COMPANY, CINCINNATI, OHIO, PROJECT, DINING ROOM, KITCHEN, COLD STORAGE PLANT AND EQUIPMENT, OHIO STATE REFORMATORY, MANSFIELD, OHIO, ELECTRIC CONTRACT, TOTAL EXPENDITURE \$3,695.00.

COLUMBUS, OHIO, January 11, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*