

4194.

BOARD OF EDUCATION—DUTY TO REOPEN SCHOOL SUSPENDED UNDER SECTION 7730, G. C., WHEN—DUTY TO PROVIDE TRANSPORTATION FOR PUPILS.

SYLLABUS:

1. *When a local village or rural district board of education refuses to reopen a school which has been suspended by authority of Section 7730, General Code, after a proper petition has been filed therefor, it is the duty of the county board of education under the power conferred upon it by Section 7610-1, General Code, to reopen such school, provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension. This duty is not dependent upon the issuance by the court of an order of mandamus to compel the opening of the school.*

2. *It is the duty of a rural or village board of education to furnish transportation for elementary school pupils who reside more than two miles from the school to which they have been assigned, and the conveyance for the transportation of such pupils must pass within one-half mile of the residence or the private entrance thereto, of the pupils so being transported. If transportation is not furnished in this manner because of its being found to be impracticable to do so, or for any other reason, it is the duty of the board to pay the parent or other person in charge of the child or children for the transportation of said child or children to school a rate determined for the particular case by the local board of education for each day of actual transportation.*

3. *When local boards of education in rural and village districts neglect or refuse to provide transportation for pupils according to law, the county board of education may provide such transportation, and the cost thereof shall be paid as provided in Section 7610-1, General Code.*

COLUMBUS, OHIO, April 27, 1935.

HON. MELTON BOYD, *Prosecuting Attorney, Cambridge, Ohio.*

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

“The Guernsey County Board of Education presents the following situation:

A few years ago the local Board of Education of Millwood Township duly closed several one room rural schools, and provided school facilities in the township at Quaker City Elementary School. Among the closed schools were two, known as Eldon and Mt. Hope. Last year, between May 1st and August 1st, residents of the Eldon and Mt. Hope School Districts, parents of twelve or more children between the ages of 7 and 15 and eligible for enrollment, in each district respectively, petitioned the local board to open each of these schools. The local board refused, but continued to offer school facilities at the Quaker City school. Parents appealed to the county board. It found that the local board had refused to reopen the Eldon and Mt. Hope school, that each school building was suitable for school purposes, that the petitions were proper and represented eligible pupils, that the school facilities at Quaker City were superior, that transportation facilities offered by the local board did not call for all pupils within one-half mile of the property entrances because of impassable

roads in bad weather, and in some cases because of refusal on behalf of pupils to accept transportation to or tuition at the Quaker City school. The county board states that some small children in accepting transportation would have to walk as much as a mile and a half to the point to which the bus comes, which is a mile from the Mt. Hope school which would be passed in walking to the bus. It recognized that some children could go home for lunch. The County Board reopened the Eldon and Mt. Hope schools; and the local board refuses to pay the teachers whom the county board employed.

(1) When a local board refuses to reopen a school as required by General Code Section 7730, and no court order in mandamus has been made, has the county board power under General Code Section 7610-1 to reopen such school?

2. May a local board contract with a licensed public carrier (bus line) to transport school children, when the route and schedule of said carrier will not permit it to render service within one-half mile of the entrance to the home premises of the child? If so, and if such service is deemed the most economic and efficient in every other respect, may the requirement of service within one-half mile (Sec. 7731) be considered 'impracticable', as the word is used in Section 7731-4?

(3) If a county board may not reopen a school, and finds that transportation facilities offered by the local board to pupils assigned to another school do not meet legal requirements, may the county board act under Section 7610-1 or any other statute, and offer school privileges at the local school house, employ a teacher and pay his salary from the general funds on vouchers chargeable against the appropriations made to the local school district?"

Section 7730, General Code, provides that a board of education in any rural or village school district may suspend by resolution, temporarily or permanently, any school in such district, because of disadvantageous location or for any other cause and provides further that whenever any school is suspended the board of education of the district shall at once provide for the assignment of pupils residing within the territory of the suspended school to such other school or schools as may be named by the said board of education. The statute also provides:

" * * Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

The courts have held that where a school has been suspended by authority of Section 7730, General Code, and a proper petition has been filed as provided by the statute to reopen the school, it is the mandatory duty of the board to comply with the terms of the petition, provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension. See *Board of Education vs. State ex rel.*, 37 O. App., 453; *Christman, et al. vs. State ex rel. Norris*, 45 O. App., 541. In the latter case it is held:

“Statute that board of education ‘shall’ reopen school for ensuing school year on application of parents or guardians of children within district held mandatory; word ‘shall’ meaning ‘must’ (Section 7730, General Code).”

In Section 7610-1, General Code, it is provided that if the board of education in a district under the supervision of a county board of education, fails to provide sufficient school privileges for all the youths of school age in the district, it is the duty of the county board of education to do what the local board should have done and to pay the cost of so doing from the general fund of the county on vouchers signed by the president of the county board of education. The amount so paid is to be retained by the county auditor from the proper funds belonging to the local district at the time of the next semi-annual distribution of taxes. In the case of *State ex rel. Masters vs. Beamer, et al.*, 109 O. S. 133-139, it was said with respect to the provisions of Section 7610-1, that:

“Under Section 7610-1 the duty of the county board of education is measured by the duty of the board of education in the district. The county board is liable to provide ‘sufficient school privileges’ only if the district is under a duty to render such service and has failed and if the county board is satisfied of such failure.”

It would seem from the provisions of Section 7610-1, General Code, and the view taken of that statute by the Supreme Court that where a duty devolved upon a local board of education to reopen a school which had been suspended by the board because of the filing of a petition for the reopening of the school in accordance with the provisions of Section 7730, General Code, and the local board failed to reopen the school and the county board was satisfied that a proper petition had been so filed and that there was a suitable school building in the territory of such suspended school as it existed prior to such suspension, it would be the duty of the county board of education to reopen the school and to provide teachers therefor and to pay the expense of the maintenance of such school from the general fund of the county. It would not be necessary for the county board to wait until an order of mandamus had been made to reopen the school before performing its duty with respect thereto, as the mandatory duty to reopen the school rests on the local board, in case a proper petition is filed, as soon as the petition is filed. An order of mandamus, if one should be issued, does not affect the duty of the local board to reopen the school. That duty existed prior to the order of mandamus or mandamus would not have been issued. Mandamus is simply a form of remedy to compel the performance of a mandatory duty.

I come now to a consideration of the matter of transportation spoken of in your inquiry. Section 7731, General Code, provides that in all city, exempted village, rural and village school districts where resident elementary school pupils live more than two miles from the school to which they are assigned, the board of education shall provide transportation for such pupils to and from school. It is further provided that when transportation of pupils is provided, the conveyance shall be run on a time schedule that shall be adopted and put in force by the board of education not later than ten days after the beginning of the school term, and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable. When local boards of education neglect or refuse to provide transportation for pupils the county board of ed-

ucation may provide such transportation and the cost thereof shall be paid as provided in section 7610-1, General Code.

A former Attorney General, in an opinion which will be found in the reported Opinions of the Attorney General for 1929, at page 1584, held with respect to the provisions of Section 7731, General Code, that:

"1. Transportation to and from school must be furnished for elementary school pupils who reside more than two miles from the school to which they are assigned, or the parents or persons in charge of such pupils paid for transporting them.

2. The law requiring transportation to and from school, of elementary school pupils who reside more than two miles from the school to which they are assigned, is satisfied if the conveyance is made to run within one-half mile of a pupil's residence or the private entrance thereto.

3. If a conveyance for the transportation of elementary school pupils to and from the school is not made to run within one-half mile of the residence, or the private entrance thereto of a pupil who lives more than two miles from the school to which he has been assigned, transportation, in the sense contemplated, is not being furnished, and the parents 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 of the General Code."

In a later opinion by the same Attorney General which opinion will be found in the reported Opinions of the Attorney General for 1929, page 1735, it is held:

"1. A board of education is required to furnish transportation for all elementary school pupils who live more than two miles from the school to which they have been assigned. In furnishing such transportation the board is required to cause the school conveyance to pass within one-half mile of the residence of each of the school pupils to be transported, or the private entrance to such residence, or may be made to respond for the reasonable value of such transportation in accordance with Section 7731-4, General Code, if the parent or person in charge of such child, furnishes the transportation.

2. If a board of education determines that it is impracticable 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."

In the light of the interpretation placed upon the provisions of Section 7731, General Code, by former attorneys general, it appears that transportation for elementary school pupils who reside more than two miles from the school to which they have been assigned must be provided by the board of education or, if such transportation in the judgment of the board is impracticable, the board may fulfill its obligation to the pupils by paying the parents or other persons in charge of the children for the transportation of such children to school a rate determined for the particular case by the board of education for each day of actual transportation. See Section 7731-4, General Code.

By the same course of reasoning, a board of education which provides, or is under the duty of providing transportation for elementary school pupils, should it find it impracticable to have the conveyance pass within one-half mile of the residence or the private entrance thereto of a school pupil as provided by Section 7731, General Code, may fulfill its obligation to the pupil with respect to this matter by paying the parent or guardian for the transportation, and that unless transportation is furnished by a conveyance which runs within one-half mile of the residence or private entrance thereto, of a pupil, transportation is not being furnished to the extent and in the manner contemplated by the law. Should a board of education find it impracticable to have the conveyance for the transportation of pupils pass to within one-half mile of the residence of the pupil or the private entrance thereto the board can not by mandamus be compelled to furnish the transportation in this manner, but must in such cases provide it otherwise.

I am therefore of the opinion in specific answer to your questions that:

1. When a local village or rural district board of education refuses to reopen a school which has been suspended by authority of Section 7730, General Code, after a proper petition has been filed therefor, it is the duty of the county board of education under the power conferred upon it by Section 7610-1, General Code, to reopen such school provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension. This duty is not dependent upon the issuance by the court of an order of mandamus to compel the opening of the school.

2. It is the duty of a rural or village board of education to furnish transportation for elementary school pupils who reside more than two miles from the school to which they have been assigned, and the conveyance for the transportation of such pupils must pass within one-half mile of the residence or the private entrance thereto, of the pupils so being transported. If transportation is not furnished in this manner because of its being found to be impracticable to do so, or for any other reason, it is the duty of the board to pay the parent or other person in charge of the child or children for the transportation of said child or children to school a rate determined for the particular case by the local board of education for each day of actual transportation.

3. When local boards of education in rural and village school districts neglect or refuse to provide transportation for pupils according to law, the county board of education may provide such transportation, and the cost thereof shall be paid as provided in Section 7610-1, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4195.

REMONSTRANCE—ELECTOR SIGNING REMONSTRANCE UNDER SEC. 4736,
G. C., MAY WITHDRAW SIGNATURE WHEN.

SYLLABUS:

The right of an elector who has signed a remonstrance against the creating of a new school district by force of Section 4736, General Code, to withdraw from said remonstrance, is a political right and cannot be waived by the elector so as to preclude him from withdrawing or cancelling his signature to a remonstrance which he may