

1625.

APPROVAL, BONDS OF AUGLAIZE RURAL SCHOOL DISTRICT, ALLEN COUNTY, OHIO—\$2,400.00.

COLUMBUS, OHIO, September 25, 1933.

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

1626.

APPROVAL, BONDS OF BUCHEL VILLAGE SCHOOL DISTRICT, ATHENS COUNTY, OHIO—\$2,400.00.

COLUMBUS, OHIO, September 25, 1933.

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

1627.

APPROVAL, BONDS OF PORTSMOUTH CITY SCHOOL DISTRICT, SCIOTO COUNTY, OHIO—\$104,000.00.

COLUMBUS, OHIO, September 25, 1933.

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

1628.

APPROVAL, BONDS OF PARIS TOWNSHIP RURAL SCHOOL DISTRICT, STARK COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, September 25, 1933.

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

1629.

CRIPPLED CHILD—BOARD OF EDUCATION UNAUTHORIZED TO PAY COST OF TRANSPORTATION THEREOF WHEN CHILD ATTENDS SCHOOL OTHER THAN THAT ASSIGNED—EXCEPTION NOTED.

SYLLABUS:

A board of education is without power to pay to the parents of a crippled child a sum of money equal to the cost of transportation of such child to the

school to which it has been assigned and permit the parent of this crippled child to transport the child to a parochial school or any other school than the one to which the child was assigned, and any payments made from school funds for that purpose are illegal expenditures of public funds, except in some instances where a high school pupil attends a different public school than the one to which he is assigned, as provided by Section 7764, General Code.

COLUMBUS, OHIO, September 26, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

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

“Section 7755-3 of the General Code of Ohio, provides for the transportation of a crippled child to the school to which he is assigned by the Board of Education of the District in which he resides.

Has the board of education the right to pay to the parents of the crippled child a sum of money equal to the cost of transportation of such child to the school in the district in which he resides and permit the parents of this crippled child to transport the child to a parochial school which is of greater distance from the home of the child than the public school in the district wherein the child resides?”

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.”

By force of Sections 7684 and 7764, General Code, children attending the public schools may be assigned by the proper school authorities to such schools as are deemed to be for the best interests of the pupils and the school system generally. No obligation rests on a board of education to provide transportation for elementary school pupils who attend a school other than the one to which they are assigned or to pay the parent for such transportation.

The statute, Section 7755-3, *supra*, does not expressly provide that the board of education shall transport a crippled child to school, but that it shall “provide for his transportation to such school.” I have no doubt that this statute authorizes a board of education to make provision, under some circumstances, for such transportation by paying the parent or person in charge of the crippled child if he provides the actual transportation to “such” school. No authority exists to provide or pay for transportation to any other school.

Under Section 7731-4, General Code, which was enacted some years before the enactment of Section 7755-3, General Code, it is provided that when transportation of school pupils is required by law and it is found to be impracticable for the board of education to transport the pupils, it is proper for the board to pay the parent or person in charge of the child a rate determined for the particular case for each day of actual transportation furnished by such parent

or person in charge of the child. While this statute does not expressly refer to Section 7755-3 of the General Code, which was not in existence when the said statute was enacted, I am of the opinion that its provisions would be held to be ample authority for a board of education to pay the parent of a crippled child for transporting the child to school if, in fact, said Section 7755-3, General Code, is not in and of itself sufficiently broad to empower the board to provide for the transportation of the child in this way.

In construing the provisions of law authorizing a board of education, to pay the parent of the child for transporting the child to school as contained in said Section 7731-4, General Code, a former attorney general held that it was not legal for a board of education to pay a parent for transporting his child unless he actually transported the child to school. See Opinions of the Attorney General for 1915, page 338. I am of the opinion that the same reasoning would apply in the instant case. No authority exists for a board of education to transport a child who is an elementary school pupil, to any other school than the one to which he is assigned and no authority exists for paying a parent to transport his child if the child attends elementary school unless he actually transports the child to the school to which he is assigned. To pay him the equivalent of the value of this transportation to the school to which the pupil is assigned when in fact the child is transported to another school even if it be a public school, is entirely unauthorized and illegal.

If the child is a high school student, this may be done in some instances in accordance with the last clause of Section 7764, General Code, which reads as follows:

“Provided, however, that when a high school pupil shall attend a high school other than that to which such pupil has been assigned, the transportation and tuition shall be based on the cost of the transportation and tuition incident to attendance at the school to which they shall have been assigned.”

By construing the terms of Section 7755-3, General Code, in the light of the well known principle of law that boards of education being creatures of statute, have such powers only as are expressly granted to them by statute, together with such incidental powers as may be necessary to carry out the powers expressly granted, it is clear that no power exists by virtue of this statute, for a board of education to transport or provide transportation for a crippled child to any school other than the one to which he is assigned. The statute expressly states that if a child is so crippled that he is unable to walk to the school to which he has been assigned, transportation may be provided to “*such school*”. Clearly, no authority is extended by this statute to pay the parent to transport his children to any other school than “*such school*”, which is the school to which the child is assigned. No other statute authorizes such power so far as elementary school pupils are concerned.

I am therefore of the opinion, in specific answer to your question that a board of education is without power to pay to the parents of a crippled child a sum of money equal to the cost of transportation of such child to the school to which it has been assigned and permit the parent of this crippled child to transport the child to a parochial school or any other school than the one to which the child was assigned, and any payments made from school funds for that purpose are illegal expenditure of public funds, except in some instances