

during a recess of one week or more when there is no actual assembly of the members and the members are at their homes. Opinions of the Attorney General for 1919, Vol. I, page 587.

Section 50 of the General Code of Ohio provides in part that "Each member (of the General Assembly) shall receive the legal rate of railroad transportation each way for mileage once a week during the session from and to his place of residence". In the matter here before me, the General Assembly met in third special session on June 27, 1934, during a recess of the second special session, at which time the assembly actually sat for three days for the transaction of business. As stated above, the word "session" as used in the above connection means "the actual assembly of the members actually sitting for the transaction of business."

In view of the above statutory provision, it is my opinion that the members of the 90th General Assembly are entitled to mileage for the week ending June 30, 1934. However, in regard to the question of mileage during a recess, I am of the same opinion as my predecessor in office, to wit, that the members of the General Assembly are not entitled to mileage each week during the recess of the second special session from May 4, 1934, to November 19, 1934, with the exception of one week's mileage for the time the members of the General Assembly were actually sitting in third special session June 27 to June 29, 1934.

Summarizing, it is my opinion that:

1. The 90th General Assembly is now in its second special session (in recess in accordance with the adjournment message of May 4, 1934).

2. All legislation left incomplete on the date of adjournment, to wit, May 4, 1934, is still pending and may be taken up in its present state on November 19, 1934, when the General Assembly reconvenes in second special session.

3. The members of the 90th General Assembly are not entitled to mileage during the time the assembly is recessed.

4. When the General Assembly in session stands adjourned to a future date and during such adjournment convenes in special session pursuant to a proclamation of the Governor, each member of the assembly shall receive weekly mileage during the time that the General Assembly is actually sitting and transacting business in such special session.

Respectfully,

JOHN W. BRICKER.

*Attorney General.*

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2928.

LIQUID FUEL TAX—DISTRIBUTION TO SCHOOL DISTRICT ON BASIS OF AVERAGE DAILY ATTENDANCE DURING PRECEDING YEAR. ADMISSION OF PUPILS FROM ANOTHER SCHOOL DISTRICT BY BOARD OF EDUCATION.

*SYLLABUS:*

1. *After deducting from the proceeds of the liquid fuel tax provided for by Sections 5542-1, et seq., of the General Code of Ohio, the requirements of a rotary fund and the cost of administration as provided for by Section 5542-18, General Code, the balance of said proceeds should be distributed to the several school dis-*

tricts of the state on the basis of the average daily attendance of pupils in the schools thereof during the next school year preceding each apportionment to said school districts, as determined by the Director of Education.

2. The per pupil share of the proceeds of the liquid fuel tax to be distributed to the several school districts on the basis of average daily attendance, should be distributed to the district where the pupil actually attends school and not to the district where the pupil resides, in cases where pupils attend school outside the district of their residence.

3. A board of education may lawfully contract with another board of education for the admission of its resident high school pupils into the schools maintained by the other board, upon such terms as to tuition as may be agreed upon, within the limits prescribed by Section 7747, General Code, and in so doing, the fact that the district where the pupils attend school will receive some financial return on account of such attendance from the distribution of the proceeds of the liquid fuel tax, may be taken into consideration.

COLUMBUS, OHIO, July 16, 1934.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

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

“I am in receipt of the following letter from the county superintendent of schools:

“I should like to request you to secure information from the Attorney General on the practice which is being advised in the state on the proper procedure as to tuition allowance from the State Fuel Tax distributed to all schools of the state in the amount dependent upon the number of pupils in attendance at that school.

The question has arisen in several districts of this county where pupils attend other school districts for high school purposes. To be specific—District A contracts for high school privileges in District B at the annual cost of \$50.00 per pupil. According to the method of distribution of the State Fuel Tax, approximately \$8.00 per year will come to each school for the number of pupils in attendance at that school. That is, the pupils from District A will be counted in the number of pupils in District B and the latter school will receive \$8.00 per pupil for these outside children.

Should District B deduct the \$8.00 per pupil from the annual tuition charge of \$50.00 and thus give the credit for the state fuel money to the district which sends the pupils; or may District B continue to charge the full \$50.00 to the local district, even though it does receive \$8.00 from the state for each pupil including those from outside the school district?

We have a number of similar cases in the county and I would appreciate a ruling from your office on the practice that is being followed throughout the state and recommended by the Attorney General's office. If a district sets a tuition rate and yet receives an apportionment from the state on outside pupils also, should it deduct this amount from the normal tuition rate or should it receive this much excess?”

By force of Sections 7747 and 7748, General Code, a board of education

which does not maintain a high school in its district, is required to pay the tuition of its resident high school pupils in the schools which they attend. In some instances a board of education which does maintain a high school is legally chargeable with tuition in other high schools for its resident high school pupils who attend other schools. The amount of that tuition is definitely fixed by Section 7747, General Code, unless the two boards of education concerned in the matter contract for a different rate of tuition.

Authority is extended to boards of education by Sections 7734 and 7750, General Code, to contract with other boards of education for the admission of pupils residing in one district to the schools of the other district, upon such terms as may be agreed upon. The tuition charge agreed upon, however, must not be greater than that fixed by Section 7747, General Code. Section 7681, General Code, provides that the schools of each district shall be free to all the youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district.

Section 7682, General Code, provides that each board of education may admit other persons to its schools upon such terms and upon the payment of such tuition within the limitations of other sections of law as it prescribes.

The "liquid fuel tax" is an excise tax imposed upon dealers in "liquid fuel" as the term is defined in the law, by virtue of the provisions of Sections 5542-1, et seq., General Code. The purpose of this tax is set forth in Section 5542-2, General Code, as follows:

"For the purpose of affording the advantages of a free education to the youth of the state and to defray the expenses of administering this act, an excise tax is hereby imposed on all dealers in liquid fuel upon the use, distribution or sale within this state by them of liquid fuel on and after the day of passage of this act, and to and including the thirty-first day of December, 1934, at the rate of one cent (1c) per gallon so used, distributed or sold, to be computed in the manner hereinafter set forth; \* \*"

Distribution of the liquid fuel tax is provided for by Section 5542-18, General Code, where, after providing that the first \$15,000 collected shall be placed in a special fund in the state treasury, to be known as the "liquid fuel tax rotary fund"; and thereafter, as required by the depletion thereof, there shall be placed to the credit of this fund an amount sufficient to make the total of said fund at the time of each such credit amount to \$15,000, and that \$35,000 of the proceeds of the tax shall be credited to the Tax Commission of Ohio and used for the actual and necessary expenses of administering the law with reference thereto during the year 1933 and \$35,000 for the year 1934, provides further:

"The balance collected under the provisions of this act, after the credits to said rotary fund, and after the amounts herein appropriated to the tax commission to pay the actual and necessary expenses of administering the provisions of this act during the remainder of the year 1933, and the year 1934, shall be placed in 'the state public school fund', which fund is hereby created, and which shall be apportioned to each school district of the state on the basis of the average daily attendance

in the schools thereof during the next school year preceding such apportionment as determined by the director of education."

It follows from the foregoing statutory provisions, that the benefit of the proceeds of the liquid fuel tax accrues to the school district where the actual school attendance exists, where the pupils attend school, and not to the district where the pupils reside, in cases where pupils attend school outside the district of their residence.

No authority exists for deducting the amount of per pupil liquid fuel tax credit from the tuition charge as fixed by Section 7747, General Code, where high school pupils residing in one district attend school in another district regardless of what may seem to be the fair thing to do. Both the tuition charge and the liquid fuel tax credit are fixed by statute and boards of education are powerless to change them unless the tuition charge is fixed by contract between the boards of education of two districts, within the limitations provided by Section 7747, General Code, in which cases the fact that the district where the pupil attends school will receive credit for that attendance in the distribution of the liquid fuel tax, may be taken into consideration in fixing that tuition charge.

I am informed that since the enactment of the liquid fuel tax law, which became effective on July 22, 1933, many boards of education throughout the state have contracted with other boards of education for the admission of their resident high school pupils into the schools of the other district, and a tuition rate has been fixed by mutual agreement, with the fact in mind that the district where the pupils attend school would receive credit in the distribution of the proceeds of the liquid fuel tax for such attendance, and it would seem that this would be the fair thing to do. It is entirely a matter of agreement, and is entirely within the powers of the two boards to agree as they see fit.

In the case stated by you, it appears that in the contract between districts "A" and "B", a definite tuition rate is fixed. Whether this contract was made prior to the enactment of the liquid fuel tax law does not appear, nor indeed, does it make any difference. If it was made after the enactment of the liquid fuel tax law, I assume the two boards took that fact into consideration. If it was made prior to that time, the passage of the liquid fuel tax law did not abrogate or cancel the contract. The law definitely fixed the place where credit for the liquid fuel tax should go, and the contract just as definitely fixed the tuition charge. District "B" can no doubt enforce the contract according to its terms. District "A" in discharging its obligation under the contract, can not insist that district "B" deduct from the \$50.00 per pupil tuition charge fixed by the contract, the amount which it received from the proceeds of the liquid fuel tax on account of the attendance in its schools of that pupil.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*