1030.

BOARD OF EDUCATION—TUITION—PUPIL ATTENDING SCHOOL OUTSIDE OF SCHOOL DISTRICT—BOARD NOT LIABLE FOR TUITION UNLESS SCHOOL TO WHICH HE IS ASSIGNED IS MORE THAN 1½ MILES FROM HIS RESIDENCE AND MORE REMOTE THAN SCHOOL WHICH HE ATTENDED.

SYLLABUS:

Under Section 7735, General Code, a board of education of a school district is not required to pay the tuition of resident children who attend school outside of the district unless the school in their own district, to which they have been assigned, is more than a mile and a half from their residence and more remote from their residence than the school which they attended.

COLUMBUS, OHIO, January 28, 1928.

HON. GEORGE G. BLECKER, *Prosecuting Attorney, Mansfield, Ohio.*

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

> "Will you please give me an opinion on the following school question? In this case a child of Worthington township of this county lived more than one and one-half miles from the school in the district where she resides and there was no nearer school in the same district so she attended the nearest school in the adjoining district where the distance was in fact greater from her home and the school where she was attending than in her own district. However, there were much better roads and her access to the latter school was much better.
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> The school board of the district where she attended have presented a bill to her home district board where she resides for tuition for the past year and the board have requested an opinion as to whether they are legally authorized to pay such bill. In my opinion it depends on an interpretation of Section 7735, G. C., as to what is meant in that statute where it said the 'nearest school in another school district'—whether that means that they may go to the closest school in the next school district regardless of how far it is or whether the school they go to in the adjoining district must be closer than the one she was assigned to in her own district.
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> I would appreciate it if you could give me an opinion on this matter."

Section 7735, General Code, provides as follows:

> "When pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another school district, in all grades below the high school. In such cases the board of education of the district in which they reside must pay the tuition of such pupils without an agreement to that effect. But a board of education shall not collect tuition for such attendance until after notice thereof has been given to the board of education of the district where the pupils reside. Nothing herein shall require the consent of the board of education of the district where the pupils reside, to such attendance."

The above section of the General Code was formerly a part of Section 4022a, Revised Statutes. Section 4022a, Revised Statutes, was codified as Sections 7735, 7736 and 7737 of the General Code. The provisions of Section 7735, General Code, as they now exist, were embodied in former Section 4022a, Revised Statutes, as amended in 1904, 97 O. L. 364. These provisions have not been changed since 1904.

Your attention is directed to the decision of the Supreme Court in the case of *Boyce* vs. *The Board of Education of Mt. Carmel Special School District,* decided in 1907, 76 O. S. 365, wherein was considered the provisions of Section 4022a, Revised Statutes, in the light of a similar question to that submitted in your inquiry. In that case the court held as stated in the syllabus:

> "Section 4022a, Revised Statutes, does not require the board of education of a school district to admit children to a school outside of the district in which they reside unless the school in their own district is more than a mile and a half and more remote from their residence than the school to which admission is sought."

This case was an action in mandamus, in which the relator sought to compel the board of education of Mt. Carmel Special School District to admit his children of school age to the school located in the said district. It was alleged by him that he resided in an adjoining district to the Mt. Carmel Special School District and that there was but one school in the district in which he resided, which school was located more than a mile and a half from his home, and that was the school to which his children had been assigned.

It was admitted in the petition that the school to which relator's children had been assigned was nearer to his residence, although more than a mile and a half therefrom, than the school in Mt. Carmel District to which he sought to have them admitted, but it was claimed that if his children were compelled to attend the school in the district where they resided they would be required to travel along a public highway which was shaded for a great distance with woods on either side, and it was lonesome and dangerous for the children to travel this road without protection. In the course of the opinion of this case the court said:

> "Notwithstanding a manifest want of care to express with precision the purpose of this legislation it is quite clear that the legislature did not contemplate any of the reasons assigned in the petition as a sufficient cause for the transfer of attendance by children from the school in the district in which they reside to that of another district. It is equally clear from the language which the legislature has employed that the only purpose to be accomplished by the section is to relieve school children from the necessity of attending a school in their own district which is more than one mile and a half from their residence, if there is a nearer school in another district. Since the petition admits that the school which is under the control of the defendants is more remote from the residence of the relator than is the school of the district in which he resides, the circuit court correctly determined that the statute does not authorize the transfer."

I am therefore of the opinion that Worthington Township School District cannot be held for the tuition of the pupil about which you inquire, who attended school in an adjoining district.

Respectfully,
EDWARD C. TURNER,
Attorney General.