

2446.

APPROVAL, CONTRACT WITH BOARD OF TRUSTEES OF OHIO STATE UNIVERSITY AND JAMES A. BRADY FOUNDRY COMPANY, AN ILLINOIS CORPORATION, FOR CONSTRUCTION OF CHAIN GRATE STOKER IN POWER HOUSE.

COLUMBUS, OHIO, October 3, 1921.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have transmitted to this office for approval, a contract (two copies) between your board of trustees and James A. Brady Foundry Company, an Illinois corporation, for the construction of a chain grate stoker in the new power house at the Ohio State University. Also the bond covering said contract.

Having before me the certificate of the director of finance showing moneys to be available for the discharge of the obligations arising under this contract, and finding same in proper legal form, I am this day noting my approval on said contract and bond, and am filing them, together with all other papers submitted to me in this connection, with the auditor of state.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2447.

WHEN BOARD OF EDUCATION MAY TRANSPORT TO HIGH SCHOOL OUTSIDE OF DISTRICT ALL PUPILS OF COMPULSORY SCHOOL AGE WHO HAVE FINISHED ORDINARY GRADE SCHOOL AND WHO LIVE MORE THAN FOUR MILES FROM ANY HIGH SCHOOL—WHEN BOARD OF EDUCATION MAINTAINS SECOND OR THIRD GRADE HIGH SCHOOL AND SATISFIES REQUIREMENTS OF SECTION 7764-1 G. C.—SECTIONAL NUMBER 7648 G. C. IN SECTION 7764-1 G. C., 109 O. L. 380, CONSTRUED TO MEAN SECTION 7649 G. C. AS SUBJECT MATTER APPARENT THAT IT REFERS TO LATTER SECTION.

1. *In lieu of providing work in high school branches, as required of boards of education, under the provisions of section 7764-1 G. C., a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum (7648 G. C.) and who live more than four miles from any high school.*

2. *A board of education maintaining a second grade or a third grade high school is satisfying the requirements of section 7764-1 G. C. by providing work in high school branches for those pupils who have not graduated from such second or third grade high school.*

3. *Where one word or a section number has been wrongly used for another and the context affords the means of construction, the proper word or section number will be deemed substituted or supplied. In section 7764-1, where provision is made that boards of education shall provide work in high school branches, as mentioned in section 7648 G. C., an error in the section number 7648 is apparent and such section number should read 7649 G. C., the latter being the section of the Gen-*

eral Code which defines what shall be work in high school branches in the public schools.

COLUMBUS, OHIO, October 3, 1921.

HON. VERNON M. RIEGEL, *Suprintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request (as submitted by the assistant director) for the opinion of this department on the following questions:

"1. May a board of education act under section 7764-1 G. C. to transport to a high school outside the district, all pupils of compulsory school age who have finished the ordinary grade school curriculum, and who live more than four miles from any high school, in lieu of providing work in high school branches within four miles of the residence of each such child?

2. Where a board of education maintains a second grade or third grade high school, is said board satisfying the requirements of section 7764-1 as to providing work in high school branches?"

Section 7764-1 G. C., to which you refer, is a new supplemental section in the new compulsory education act (Bing law), effective August 25, 1921, and as enacted in 109 O. L., p. 380, reads as follows:

"Boards of education shall provide work in high school branches, as mentioned in section 7648, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

This section is supplemental to section 7764 G. C. and should be read in conjunction with the latter. Thus section 7764 G. C. reads as follows:

"The child in his attendance at school shall be subject to *assignment* by the principal of the private school or superintendent of schools as the case may be, *to the class in elementary school, high school or other school, suited to his age and state of advancement and vocational interest. within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school, or other school.* The board of education of the district in which the child lives shall have power to furnish such transportation."

In your first question you desire to know whether a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum and who live more than four miles from any high school, *in lieu of providing work in high school branches within the four miles of the residence of each such child*, and this is answered in section 7764 G. C., supra, which says:

"* * * if the schooling is not available within the district,

without the school district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than * * * four miles from the school, if a high school.
* * *"

In its closing language section 7764 G. C., preceding 7764-1 G. C., specifically says that the board of education of the district in which the child lives "shall have power to furnish such transportation". If a board of education required to "provide work in high school branches" (7764-1) does not provide such work in the district, then it must provide such work for pupils concerned, by transporting outside the district. Under section 7690 G. C. the board may decide its method of providing high school work, but under section 7764-1 G. C. such high school work *must be furnished*.

In your second question you desire to know "where a board of education maintains a second or third grade high school, is said board satisfying the requirements of section 7764-1 as to providing work in high school branches?"

Section 7764-1 General Code says that boards of education "shall provide work in high school branches, as mentioned in section 7648 General Code", at some school within four miles from the residence of each such child of compulsory school age who has finished the ordinary grade school curriculum, excepting only these two groups:

1. Those children who live within four miles of an established high school.

2. Those for whom transportation to a high school has been provided, the question of distance from such high school not entering.

Section 7764-1 says that the work in high school branches shall be in those high school branches as mentioned in section 7648, General Code, and reference to section 7648 shows an apparent error on the part of the framers of the legislation and the general assembly itself in enacting it, for section 7648 G. C. is the section which defines an elementary school and names the branches which are to be taught in such type of school. Thus section 7648 G. C. reads:

"An elementary school is one in which instruction and training are given in spelling, reading, writing, arithmetic, English language, English grammar and composition, geography, history of the United States, including civil government, physiology and hygiene. Nothing herein shall abridge the power of boards of education to cause instruction and training to be given in vocal music, drawing, elementary algebra, the elements of agriculture and other branches which they deem advisable for the best interests of the schools under their charge."

Apparently what was actually meant by the framers of the legislation and the general assembly itself in enacting House Bill 111 was that the reference should be to section 7649 G. C. and not 7648 G. C., for it is 7649 G. C. which defines a high school and then names the subjects which are to be taught in a high school. Thus section 7649 G. C. (the section which speaks of high school branches) reads as follows:

"A high school is one of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or

mental science, ancient or modern foreign languages, or both, commercial and industrial branches, *or such of the branches named as the length of its curriculum makes possible*. Also such other branches of higher grade than those to be taught in the elementary schools, with such advanced studies and advanced reviews of the common branches as the board of education directs."

It is at once apparent that if section 7648 G. C. (bearing upon elementary branches) is to be read in conjunction with section 7764-1 G. C., by the reference appearing in the latter section, then section 7764-1 is meaningless and does not accomplish what was intended by the general assembly, that is, "work in high school branches", which branches are set forth in section 7649 G. C.

To illustrate further the legislative intent, it is well to examine the original bill (H. B. 111) as first printed by the general assembly. Clearly, what was in mind was "advanced work" beyond the ordinary grade school, for, as first printed in H. B. 111, section 7764-1 G. C. read as follows:

"Sec. 7764-1. A board of education shall provide *advanced work*, as mentioned in section 7748, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

Here we have "advanced work as mentioned in section 7748", not "7648" or "7649", the two sections of the General Code speaking of branches or subjects to be taught. Reference to section 7748 (which is too long to quote here) shows it to be a section upon tuition and transportation and not upon subjects or branches at all. The general assembly accepted the provisions of section 7764-1 G. C. as first introduced and printed in H. B. 111, with but two exceptions or corrections. These were to change "advanced work" to "work in high school branches" as the first change and then as the second change *an attempt to correct* the code number of the section cited in 7764-1 G. C., to make it workable and conform to the meaning intended in 7764-1 G. C., especially after "work in high school branches" was inserted instead of "advanced work" to make it more definite, in that work in "elementary branches" (7648), though "advanced work", was not meant. Thus the journal of the house of representatives on March 11, 1921, shows that the committee on common schools reported the following amendment to H. B. 111, to-wit:

"In line 164 omit 'A' and change 'board' to 'boards'; omit the word 'advanced' and between the word 'work' and the comma, insert 'in high school branches'.

In line 165 change '7748' to '7648'."

This refers to 7764-1 G. C. (a new supplemental section), the lines of which in H. B. 111 were lines 164 to 169, inclusive. These amendments were adopted by the house of representatives and incorporated into H. B. 111 (Sec. 7764-1 G. C.) as it went to the senate; without any other change in 7764-1 G. C., both houses ultimately passed H. B. 111 and the section became law as it now reads. The first amendment (of a descriptive nature) containing definite words changing "advanced work" to "work in high school branches" is clear and definite as to the intent of the lawmaking body that

such work should be in "high school branches" and not merely "advanced" work, this latter being stricken out. The second amendment attempting to make a section number correct, in changing "7748" to "7648" and not to "7649", is subsidiary to the first descriptive language. The first amendment was clear in its meaning as soon as it was heard read, while the second, referring to a code section number to be corrected, would require an examination of the General Code in most instances to verify whether such proposed change in number was absolutely correct and fitted into the language of definite meaning first adopted. The legislative intent appears in the first change in 7764-1 G. C. in definite language, and the use of "7648" instead of "7649" in the second amendment, is a legislative error and carries no intent. Unless cognizance is taken of the first change described, and the same given its proper weight, the section (entirely new law) fails to accomplish its intended purpose, and is unworkable. The "work" mentioned in "7648" G. C. was already being carried on by *every* board of education in the state, and no further law was needed or desired on instruction in elementary branches. Again, section 7764-1 G. C. refers to those children "who have finished the ordinary grade school curriculum" and these are the children who have completed the "work" set forth in 7648 G. C. and are now ready for the "work" set forth in 7649 G. C., that is, "work in high school branches". The further education of these children (through with the "curriculum" in 7648 G. C.) was what the general assembly had in mind, having provided in other sections that children must attend school until eighteen years of age.

A case similar to this and passed upon by this department in 1918 grew out of the language occurring in section 4726-1 G. C., one of the sections upon the centralization of schools, wherein section 4726-1 provided that three members of the board of education to be chosen were "to serve for three years", while other sections of law provide that the term of a member of a rural board of education shall be four years. The error appearing in 4726-1 G. C., as enacted in 106 O. L., 442, using the words "three years" where it was intended to be "four years", was at once apparent and the then Attorney-General held as follows in Opinion 970, appearing at page 186, Vol. I, 1918, to-wit:

"Where one word has been wrongly used for another and the context affords the means of construction, the proper word will be deemed substituted or supplied.

In section 4726 G. C. where provision is made that three members of a board of education shall be elected for THREE years, an error is apparent and the phrase therein should read 'shall elect two members of the board of education for two years and three members to serve for FOUR years, and at the proper elections thereafter their successors shall be elected for four years.'

In this opinion cited there are a number of cases on statutory construction which sustain the opinion of the Attorney-General that the intent of the general assembly should be considered and the statute made workable in the light of the intent of the law-making body, where the error is flagrant and at once apparent. It may be said that this construction put upon section 4726-1 by the Attorney-General in 1918, in order to make the section workable, has been uniformly accepted, as is indicated by the fact that the section still reads three years, when it should read four years, the general assembly itself not having corrected the error appearing in 4726-1.

The rule has been well stated in Vol. 25, Ruling Case law, under "statutes" as follows:

"214. The most common occasion for construing statutes is where there is found in a statute some obscurity, ambiguity or other fault of expression; for in that case it is necessary to interpret the law in order to discover the true meaning. And if the legislature has enacted two or more statutes which from their wording appear to be inconsistent * * * there is an ambiguity, for * * * it is always presumed it intended its enactments to become valid and enforceable laws. Another occasion for construing a statute is where uncertainty as to its meaning arises not alone from ambiguity of the language employed, but from the fact that giving a literal interpretation to the words will lead to such unreasonable, unjust or absurd consequences as to compel a conviction that they could not have been intended by the legislature.

215. * * * The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment. The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted. * * *

216. In the interpretation and construction of statutes the primary rule is to ascertain and give effect to the intention of the legislature. As has frequently been stated in effect, the intention of the legislature constitutes the law. All rules for the interpretation and construction of statutes of doubtful meaning have for their sole object the discovery of the legislative intent, and they are valuable only in so far as, in their application, they enable us the better to ascertain and give effect to that intent. * * *

222. It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. * * * When the intention of a statute is plainly discernable from its provisions that intention is as obligatory as the letter of the statute, and will even prevail over the strict letter. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. * * * The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to injustice, to absurdity, or contradictory provisions. It is an old and unshaken rule in the construction of statutes that the intention of a remedial statute will always prevail over the literal sense of its terms, and therefore when the expression is special or particular, but the reason is general, the expression should be deemed general. It is also an old and well established rule of the common law, applicable to all written instruments, that 'verba intentioni, non e contra, debent inservire;' that is to say, words ought to be more subservient to the intent and not the intent to the words. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning, for he who considers merely the letter of an instru-

ment goes but skin deep into its meaning. * * * Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. * * * The letter of a statute must not be unreasonably violated; it is to be sacrificed only so far as is necessary to give effect to the legislative intent. The rule has no application at all where the intention of the legislature, as expressed in the law, is reasonably free from doubt. And the literal and obvious interpretation of the terms of a statute should be adhered to in case the intention of the legislature is doubtful. The rule is to be applied only where there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. * * * In order that a statutory provision may be construed differently from its literal meaning, it must be inconsistent with or repugnant to some other provision in or the general purview of the act, * * *. An essential element of the doctrine is that the intention should clearly appear in the enactment, otherwise its terms cannot be disregarded."

It must therefore be held that the "subjects mentioned in section 7648", as appearing in 7764-1 G. C., really means the subjects mentioned in 7649, the latter being the section which speaks about high school subjects. This is further evidenced by the language appearing in section 7651 G. C. as it existed prior to its amendment in 107 O. L., 624, the section formerly reading as follows:

"The high schools of the state shall be classified into schools of the first, second and third grades. All courses of study offered in such schools shall be in branches enumerated in section seventy-six hundred and forty-nine."

Section 7651 G. C. reads at the present time as follows:

"The high schools of the state shall be classified into schools of the first, second and third grades. The superintendent of public instruction shall formulate standards under which the high schools of the state shall be administered. The superintendent of public instruction shall formulate a policy for the recognition of intermediate schools (junior high schools) and for public schools dividing their course as follows: six years elementary, three years intermediate and three years high school. Graduates of intermediate schools shall be given such high school credit as the superintendent of public instruction may direct."

The second and third grade high school receives its certification as to its grade (some times called a charter) from the superintendent of public instruction, after proper investigation by him, and the fact that the second or third grade high school has been rated as such by the department of education, and as *the charter from the superintendent of public instruction is a clear indication that the second or third grade high school in question is providing "work in high school branches"* (7764-1), such schools fall within the intent of section 7764-1 G. C.

In reply to your inquiry you are therefore advised that it is the opinion of this department, upon the questions involved, that:

1. In lieu of providing work in high school branches, as required of boards of education, under the provisions of section 7764-1, G. C., a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum (7648 G. C.) and who live more than four miles from any high school.

2. A board of education maintaining a second grade or a third grade high school is satisfying the requirements of section 7764-1 G. C. by providing work in high school branches for those pupils who have not graduated from such second or third grade high school.

3. Where one word or a section number has been wrongly used for another and the context affords the means of construction, the proper word or section number will be deemed substituted or supplied.

In section 7764-1, where provision is made that boards of education shall provide work in high school branches, as mentioned in section 7648 G. C., an error in the section number 7648 is apparent and such section number should read 7649 G. C., the latter being the section of the General Code which defines what shall be work in high school branches in the public schools.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2448.

AUTOMOBILES—AMENDED SENATE BILL NO. 3 (109 O. L. 330) CONSTRUED—NOT NECESSARY TO FILE BILL OF SALE UNLESS TRANSFER OF TITLE TO MOTOR VEHICLE HAS TAKEN PLACE—WHAT BILL OF SALE MUST CONTAIN—TIME SAME MUST BE FILED—NO REQUIREMENT TO EXECUTE SAME IN DUPLICATE.

1. *Under Amended Senate Bill No. 3, known as the "Atwood automobile anti-theft law," it is not necessary that any paper denominated a bill of sale be filed in the office of the clerk of courts of a county unless and until a transfer of title to a motor vehicle or used motor vehicle has taken place.*

2. *Under this measure the bill of sale, in cases where title has passed, must include all the terms of the instrument of conveyance by which title is passed; as well as the special matter required to be incorporated in such bill of sale by the said act; but if no such written instrument of conveyance has been given the bill of sale may be limited to the items required by the act, and if title does not pass the bill of sale, while required to be given if possession changes, need not show the contract under which possession changes and need not be filed for record until title does pass.*

3. *The time within which a bill of sale or paper conveyance must be filed in the office of clerk of courts depends upon the time when title passes.*

4. *There is no requirement that an assignment of the original bill of sale of a used motor vehicle, which is required to be made when the title to such used motor vehicle passes, shall be executed in duplicate and filed in the office of any clerk of courts.*

COLUMBUS, OHIO, October 3, 1921.

HON. JOHN R. KING, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—You request the advice of this department upon the following questions: