

return the same with my approval endorsed thereon and upon the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4181.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN RICHLAND COUNTY.

COLUMBUS, OHIO, March 25, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4182.

APPROVAL, NOTES OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$7,930.00.

COLUMBUS, OHIO, March 25, 1932.

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

4183.

SCHOOL TRANSPORTATION—NON-RESIDENT PUPILS ATTENDING SCHOOL IN ANOTHER DISTRICT—REASONABLE CHARGE MAY BE ASSESSED FOR SUCH TRANSPORTATION.

SYLLABUS:

1. *Where non-resident pupils attend the schools of a district, either under a contract made in pursuance of Section 7750, General Code, or by authority of Section 7682, General Code, transportation facilities maintained by the district where the school attended is located, may be extended to those non-resident pupils and a proper charge made therefor by the district furnishing the transportation.*

2. *The proper charge to be made for such transportation depends on circumstances. It should be fixed at such an amount as will reasonably cover the proportionate cost of furnishing the transportation, and no more.*

COLUMBUS, OHIO, March 25, 1932.

HON. MARION F. GRAVEN, *Prosecuting Attorney, Wooster, Ohio.*

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

"The East Union Township Board of Education is running a school bus owned by them from a little unincorporated village known as Honeytown, to the consolidated school at Apple Creek, Ohio, transporting children from the Honeytown School, which has been suspended, to the Apple Creek School.

Both schools are in the same school district. To avoid paying high school tuition to Wooster, the board transports on the same bus the high school pupils from the Honeytown district.

Just east of Honeytown there are some high school pupils who formerly furnished their own transportation to the Apple Creek High School, but who prefer to ride on the school bus and are willing to pay a small amount for this privilege instead of driving their own automobiles.

The question presented is whether or not the East Union Board of Education would have the right to charge these high school pupils for such transportation. Of course I am referring to the pupils who have been furnishing their own transportation and who now desire to pay for their transportation.

It is desired to know if a charge can be made, and if so, what the charge should be."

It is fundamental that boards of education have limited powers only. Being creatures of statute, like boards of county commissioners and similar administrative boards, their powers are such only as are expressly conferred by statute, together with such incidental powers as are necessary to carry out the express powers granted. Whatever is necessary to carry out an express power granted by the statute, is said to be included within the express grant. This is sometimes referred to as an implied power. Strictly speaking, it is an incident to the express power. Courts consistently and drastically apply this rule. *State ex rel. Locher, Prosecuting Attorney, vs. Menning*, 95 O. S., 97; *State ex rel. Clarke vs. Cook, Auditor*, 103 O. S., 463; *Schwing vs. McClure*, 120 O. S., 335; *McQuillin on Municipal Corporations*, 2d Ed., Sections 135 and 2598.

The function of boards of education is to administer the public school system of the state within their respective districts. In doing so, their duties are to conduct the schools within their districts and their powers to do so must be exercised in substantial conformity with the statutes applicable. They can not engage in business or make contracts outside their functions touching upon the conduct of the schools and the education of the youth resident in their districts. *McQuillin on Municipal Corporations*, supra.

The laws relating to the transportation of pupils, although quite general in terms, do not extend power to a district board of education to transport any pupils except those residing in its district and possibly those attending the schools of the district either under contract or as tuition pupils, although this latter power is not clear and definite. If the power exists at all, it exists only as an incident to the power of a board of education to contract with another board for the schooling of its high school pupils in the schools of the district by virtue of Section 7750 of the General Code, or as an incident to the power to admit pupils to its schools in pursuance of Section 7682 of the General Code.

Section 7681 of the General Code, provides that the schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district.

Section 7682 of the 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.

Section 7750 of the General Code, provides that a contract may be made by a board of education with another board which does not maintain a high school, for the schooling of all its high school pupils.

Sections 7747 and 7748 of the General Code, provide that the board of education in a district which does not maintain a high school shall pay the tuition of resident pupils who have completed the work in the elementary grades and are eligible to attend high school, in other high schools which they may attend. Other statutes provide more or less in detail, how and when such high school tuition shall be paid.

Sections 7749 and 7749-1 of the General Code, provide that transportation to high school may be furnished by a board of education, but need not be so furnished unless the same is deemed and declared by the county board of education to be advisable and practicable. The power to provide transportation no doubt exists even though the board does not maintain a high school of its own and contracts with another board for the schooling of its high school pupils, or when a pupil is permitted to attend another high school without any special contract, and merely with the understanding that tuition will be paid in accordance with Sections 7747 and 7748 of the General Code.

I gather from your inquiry that the Apple Creek High School is maintained by the Board of Education of East Union Township Rural School District and that the pupils from "east of Honeytown" to whom the board wishes to extend its transportation facilities are attending this high school maintained by it. If these pupils were attending some other high school than the high school maintained by the board of education which is running the school conveyance, I would have no hesitancy in saying that the board could not legally permit those children to be conveyed in the school conveyance and make a charge therefor. A board of education is clearly without power to become a common carrier for hire, and would have no more right to carry passengers in its school conveyance, for hire, than it would to carry freight. The situation here, however, is such that the transportation of these pupils, if permitted, is an incident to their attendance at the high school maintained by the board. These pupils, no doubt pay tuition in the Apple Creek High School, or have it paid by the school district of their residence, either by reason of a contract made in pursuance of Section 7750 of the General Code, or by operation of law, as provided by Sections 7747 and 7748 of the General Code.

As stated above, the authority of a board of education to convey pupils, other than pupils resident of the district, is not clear. I am informed that it is quite a general practice for this to be done. Administrative officials have so construed the law as to include within contracts made for the schooling of pupils outside the district the transportation of those pupils. In a great many places, where contracts have been made with other districts for the schooling of their high school pupils, by authority of Section 7750 of the General Code, there has been included in the contract for tuition a charge for the transportation of those pupils and the school board maintaining the high school sends their school conveyance into the other district and conveys the pupils of that district the same as they do their resident pupils. The board contracting for the schooling of its pupils in another high school could clearly furnish transportation to that high school in a conveyance of its own, and I see no substantial difference in their contracting for that transportation with the district maintaining the high school and including the transportation charge with the tuition charge as being a ~~legiti-~~

mate expenditure for the furnishing of high school facilities for its resident pupils.

If a school district has resident pupils that attend high school in an adjoining district, under circumstances requiring it to pay tuition for those pupils, and it determines that it wishes to also provide transportation for those pupils, there would seem to be no substantial difference between its furnishing that transportation in a conveyance of its own or contracting with the board which maintains the high school for the furnishing of the transportation. If the board of the pupil's residence does not determine to furnish transportation for the pupil, and the pupil pays his own transportation the situation would be practically the same.

In most instances, at least, it is some advantage to a school board maintaining a high school to secure the attendance of outside pupils, and thereby supplement its school funds by the tuition received from those pupils. If, in the opinion of the board of education, it is practicable and advisable to permit those pupils to use its transportation facilities, I am of the opinion that it is not an abuse of discretion, and not beyond its power to do so, especially, if to permit those pupils the use of its school conveyance does not so crowd the conveyance as to interfere with the transportation facilities provided for its resident pupils.

The charge to be made for this transportation depends on the circumstances. It should be proportionate to the cost of furnishing the transportation and should not be made with a view to profit but with a view only to covering the actual cost.

I am therefore of the opinion, in specific answer to your question, that under the circumstances outlined in your inquiry, the East Union Board of Education has a right to permit the pupils in question to use the transportation facilities provided for the resident pupils of East Union Township Rural School District, provided to do so does not interfere with the use of those facilities by the pupils who are residents of the district. The amount of the charge to be made for the use of those transportation facilities to be based upon the proportionate cost thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4184.

CHECK—DEPOSITED WITH BANK FOR COLLECTION—HELD BY BANK
ON TAX LISTING DAY—SHOULD BE RETURNED FOR TAXATION
AS "OTHER INTANGIBLE PROPERTY."

SYLLABUS:

An individual engaged in business sells goods to a customer for the price of \$1,060.00 cash, and enters the item among his accounts receivable. On the day prior to tax listing day, the individual receives the customer's check for the full amount, drawn on the customer's bank in another city. He takes the check to his own bank in Ohio, which declines to credit his account therewith, but accepts the check, endorsed for collection, and carries the item in a separate account as agent or trustee, in which condition the transaction stands on listing day. Held: That assuming said check to be good and that the same is paid upon presentation and passed to the