

1793.

BOARD OF EDUCATION—DESIGNATION OF A DEPOT FOR PUPILS ON TRANSPORTATION ROUTE DISCRETIONARY WITH SAID BOARD—WHEN PLACES DESIGNATED, CERTAIN QUALIFICATIONS NECESSARY—SECTION 7731-1 G. C. CONSIDERED.

Under the provisions of section 7731-1 G. C., the designating of a depot for pupils on a transportation route is discretionary with the board of education; where such board has by resolution designated certain places as depots, from which to gather children for transportation to school, such depots must be provided with a shelter and be made comfortable during cold and stormy weather, and shall in no case be located more than one-half mile from the private entrance to the residence of the children compelled to use such depots.

COLUMBUS, OHIO, January 15, 1921.

HON. CHESTER A. MECK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“In Lykens Township Consolidated School District in Crawford county, Ohio, the schools have been centralized and only one school building in that school district to which all of the pupils within that school district go to attend school. A girl thirteen years of age resides with her father more than two miles, about two and a half, from that school building. There is no school house closer than two miles and a half from where that girl resides. The board of education of that consolidated school district furnish conveyance for all of the pupils going to that centralized school who live more than two miles from the same; and the board wants this girl to walk a little less than one-half mile from her residence, or the private entrance to the premises on which she lives, to meet the conveyance to take her to that school and this girl refuses to walk that half a mile from the private entrance to her premises on which she lives to meet the conveyance to take her to the school, unless the board of education would construct or erect a suitable depot at the place where she is to meet this conveyance to protect her against the inclement weather.

The board is of the opinion that it can order and compel this girl to walk that half a mile or less to meet this conveyance without the board, at that place of meeting, erecting any depot or shelter for her convenience. The board contends that the erecting of a shelter is discretionary with the board, and that the board has complied with the law when it drives the conveyance within a half mile from the residence of this child.”

Under the provisions of the compulsory education law, the girl in question can be compelled to attend the public schools or a school of a similar nature, as provided in section 7763 G. C. The question, however, is whether the pupil can be compelled to walk a half mile or less to meet a school conveyance to convey her to the school, unless the board of education places a depot or shelter for her convenience at the point where the conveyance comes nearest to the entrance of her home.

Pertinent sections of the statutes upon this question are as follows:

“Section 7731. In all rural and village school districts where pupils live more than two miles from the nearest school, the board of education shall provide transportation for such pupils to and from such school * *. When transportation of pupils is provided, the conveyance must pass within one-half mile of the residence of such pupils or the private entrance thereto. * * *” (107 O. L.)

“Section 7731-1. The boards of education of city, village or rural school districts may by resolution designate certain places as depots from which to gather children for transportation to school, when such districts provide transportation. The places designated as depots shall be provided with a shelter and be made comfortable during cold and stormy weather. Such depots shall in no case be more than one-half mile from the residence or the private entrance of such residence of pupils who are compelled to use such depots.”

In your statement of facts you say that the board of education contends that the erecting of a shelter is discretionary with the board and that the board has complied with the law when it drives the conveyance within one-half mile from the residence (or the entrance thereto) of this child. It would appear, therefore, that the board of education has complied fully with the provisions of section 7731, supra, and the point at issue is the proper construction of the language appearing in section 7731-1, as amended by the last legislature in 108 O. L., page 704. This section is the very latest pronouncement of the General Assembly upon the question of transportation of children to school, and in passing it may be mentioned that it is the only section of the statutes which implies transportation of school pupils in city districts as well as village and rural school districts. A careful reading of section 7731-1 indicates that the intention of the General Assembly may have been that in order to keep up a careful schedule on the transportation route and to avoid unnecessary stopping where homes were close together in a given mile, that is, one-half mile on each side of a certain place to be designated as a depot, the children within that mile, for the good of all concerned, should meet at a designated hour at a central spot, to be designated by the board of education by resolution as a depot. This condition frequently obtains where a small village or hamlet has had its local school discontinued and the transportation vehicle passes through the hamlet, and instead of stopping at every one of the homes of the children to be transported, time is saved by having all come to a central spot. The law then provides that if this spot or place is designated by resolution as a depot, it shall be provided with a shelter and be made “comfortable during cold and stormy weather” and shall in no case be more than one-half mile from the residence or the private entrance to such residence of pupils who are compelled to use such depots.

The case before us is whether the board of education is compelled to provide a shelter for a single child, while section 7731-1 says that these depots are to be designated as places from which to gather children; that is, the plural, or a group of school pupils. Again, in the last sentence of the section, it appears that the plural is again contemplated, for the word “pupils” is used rather than “pupil.”

It cannot be denied that there is considerable merit to the proposition that a child of tender age should not be compelled to wait for an indefinite period in bad weather at some cross road for the school conveyance to appear. This condition frequently obtains because the school conveyance for one cause or another cannot always be exactly on schedule time at that designated spot. The tendency of the law is always toward the conservation of the pupils' health and no board of education would knowingly desire to be a party to undue exposure of a child to inclement weather, and possibly subsequent illness. The contemplation of the

law seems to be that the school conveyance is to run on schedule time and there should be no unnecessary wait on the part of the pupil at a designated point at which the conveyance will pick up such pupil. There must necessarily be some exposure incident to attending school, because this has always obtained in attending the single rural school rooms in the country before the days of transportation to centralized schools. There may be a transportation route on which there is no occasion for the board to designate certain places "as depots from which to gather children for transportation to school," because the homes of the pupils might all be so far apart that the stops of the school conveyance would be made at the home of each pupil. In this instance it would be apparent at once that there would be no occasion for the board of education to designate certain spots as depots. If section 7731-1 meant that each child who had a half mile to walk to a designated point in order to meet a school conveyance was to be provided with a shelter at that particular point, more than likely the section would clearly have said so. What the section does do is to give authority to those boards of education which desire it to gather *children* for transportation at designated places, which authority does not appear in other sections of the statutes except by implication. While the rights of the individual child must be cared for, the interest of the district as a whole cannot be overlooked, and any other construction than the one given herein might result in the parent of each school child to be transported demanding that a shelter be provided for his child at the point where the conveyance comes nearest to his residence, and the result would be that the board of education would be called upon to erect an unusually large number of shelter houses for individual pupils along the transportation routes. Clearly this was not the contemplation of section 7731-1, for, as indicated heretofore, it is the plural (that is, "children") that is used in the section, carrying the clear inference that this provision was to be made for a crowd rather than for a single pupil, and that even then it was within the discretion of the board of education to officially designate certain places as depots for transportation purposes, and further, that this action of designation should be a formal one, that is, "by resolution spread upon the minutes of the board of education," so that all persons in the school district would have notice thereof and should be governed thereby.

From a careful reading of section 7731-1 as a whole, it does not appear that the word "may" in the first sentence of such section can be made to read "shall", which construction would be necessary in order to compel the board of education to provide a shelter for the pupil in question. Rather does the first sentence of the section indicate a permission that the board may designate places as depots, but if such places are designated and children instructed to go there to assemble for transportation to school, such places thereafter shall not be barren and exposed to the elements, but if designated as depots, or places of assemblage, they "shall be provided with shelter and made comfortable during cold and stormy weather."

It is therefore the opinion of the Attorney-General that under the provisions of section 7731-1 G. C. the designating of a depot for pupils on a transportation route is discretionary with the board of education; where such board has by resolution designated certain places as depots, from which to gather children for transportation to school, such depots must be provided with a shelter and be made comfortable during cold and stormy weather, and shall in no case be located more than one-half mile from the private entrance to the residence of the children compelled to use such depots.

Respectfully,
JOHN G. PRICE,
Attorney-General.