

OPINION NO. 80-012

Syllabus:

1. A board of education must provide transportation for children from grades kindergarten through eight who live more than two miles from the nonpublic school which they attend when such school is in compliance with the rules promulgated by the State Board of Education pursuant to R.C. 3301.07(D), unless such transportation is found to be unnecessary or unreasonable or would require more than thirty minutes of direct travel time. The local board of education has the option of providing transportation for students living less than two miles from such school or more than thirty minutes from such school. R.C. 3327.01.
2. The two-mile limitation set out in R.C. 3327.01 is measured from the school which the child attends, in the case of nonpublic schools, and from the school to which the child is assigned by the board of education, in the case of public schools.

To: David E. Lightliser, Licking County Pros. Atty., Newark, Ohio
By: William J. Brown, Attorney General, April 17, 1980

I have before me your request for my opinion, in which you ask the following questions:

1. May the Granville Exempted School District provide transportation for students to a nonpublic elementary school which is not chartered?
2. If the answer to question one is in the affirmative, may the school district provide transportation to children who live within the two-mile limitation set out in R.C. 3327.01?
3. From what distance is this two miles measured, i.e., from the exempted village school or from the nonpublic school?

At the outset, it should be noted that the authority of boards of education is derived solely from statute and limited to powers expressly granted or necessarily implied from those expressly given. See, e.g., Verberg v. Board of Education, 135 Ohio St. 246, 20 N.E.2d 368 (1939); Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929). In a well-reasoned opinion, one of my predecessors concluded that, absent express statutory authority, boards of education have no power to furnish transportation for private or parochial school students, either voluntarily or by contract. 1963 Op. Att'y Gen. No. 517, p. 530. Such express authority has, however, been provided by the 1965 amendment to R.C. 3327.01. 1965 Ohio Laws 808 (Am. S.B. 365, eff. Jan. 1, 1966). Am. S.B. 365 was enacted to provide school children with safe transportation, and extended the law to cover all children attending a "school for which the state board of education prescribes minimum standards," thus including nonpublic schools. Honohan v. Holt, 17 Ohio Misc. 57, 244 N.E.2d 537 (C.P. Franklin County 1968).

Since a board of education may provide bus transportation for nonpublic school students, the resolution of your first question turns upon a determination of whether R.C. 3327.01 contains a requirement that the school in question be chartered by the State Board of Education. The first paragraph of R.C. 3327.01 deals with elementary school students, and provides as follows:

In all city, exempted village, and local school districts where resident school pupils in grades kindergarten through eight live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the nonpublic school which they attend the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable. (Emphasis added.)

R.C. 3327.01 mandates that transportation "shall" be provided to all elementary students living more than two miles from the school which they attend in the case of nonpublic schools, and the school to which they are assigned in the case of public schools, unless such transportation is found to be unnecessary or unreasonable. R.C. 3327.01 goes on to provide:

A board of education shall not be required to transport elementary . . . pupils to and from a non-public school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation, appointed under section 3327.01 of the Revised Code, for the attendance area of the district of residence.

Thus, the statutory scheme allows for some exceptions from the requirement that transportation to nonpublic elementary schools be provided. Furthermore, local boards of education are not required to transport students attending a school for which the State Board of Education does not prescribe minimum standards pursuant to R.C. 3301.07(D). 1968 Op. Att'y Gen. No. 68-058.

R.C. 3301.07(D) requires the State Board of Education to formulate "minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality." By its express terms, R.C. 3301.07(D) requires the State Board to prescribe standards for nonpublic schools, as well as public schools. Pursuant to R.C. 3301.16, the State Board must classify and charter individual schools.

Read literally, R.C. 3327.01 could be construed as requiring a school board to provide transportation for children attending any place claiming to be a school. The statute does not state that a school must be chartered pursuant to R.C. 3301.16, but, rather, speaks in terms of schools for which the State Board "prescribes minimum standards." Inasmuch as the State Board of Education prescribes minimum standards for all schools, it could be argued that R.C. 3327.01 is applicable to the students of any purported school, whether or not such "school" even attempts to comply with the Board's standards. I do not believe, however, that such a result was intended by the General Assembly. In enacting a statute, it is presumed that a just and reasonable result is intended, and the consequences of a particular interpretation may be considered in construing an ambiguous statute. R.C. 1.47(C); R.C. 1.49(E). R.C. 3321.07 prescribes that children given instruction other than in a public school must attend a school "which conforms to the minimum standards prescribed by the state board of education." Hence, transportation of children attending a school not in compliance with State Board standards would involve the expenditure of public funds in aid of a violation of the state compulsory education laws. On this basis, I must conclude that a literal interpretation of R.C. 3327.01 is unwarranted.

On the other hand, a conclusion that R.C. 3327.01 requires that a school be chartered is not compelled. In other instances, the General Assembly has seen fit to specifically include a statutory requirement that a school be "chartered." See R.C. 3317.024(P) (additional state funds shall be distributed to school districts for each pupil attending a "chartered nonpublic" school); R.C. 3317.13(A)(2) ("years of

service" for purpose of teacher salary schedules includes all years of service in a "chartered, nonpublic school"). The legislative use of certain language in one instance, and different language in another, may indicate that different results were intended. Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 158 N.E. 81 (1927); 1979 Op. Att'y Gen. No. 79-084. Inasmuch as the General Assembly has included an express requirement that nonpublic schools be chartered for other purposes, it may be inferred that a different result was intended in R.C. 3327.01. It has been stated that the authority in R.C. 3327.01 "is extended only to a school which meets the minimum standards provided by the state board of education." 1974 Op. Bureau of Inspection and Supervision No. 11. I conclude, therefore, that R.C. 3327.01 should be construed as authorizing the provision of transportation of nonpublic school students where such school is in compliance with the rules of the State Board of Education promulgated pursuant to R.C. 3301.07(D).

In some cases, a school may be in compliance with State Board requirements and yet not be chartered. This is the situation presented in your inquiry. As you state in your letter, the Granville Board of Education wishes to know whether it can provide transportation for elementary age students attending a private school known as the Welsh Hills School. You further state that it is your understanding that this school has met all State Board standards except for minimum enrollment. This has been confirmed by the State Board of Education, which has informed me that a letter of approval to operate has been issued by the Board to the Welsh Hills School pursuant to 2 Ohio Admin. Code 3301-31-02(E). (A nontax supported elementary school may not begin operation unless prior "approval of a plan submitted for the total school organization and program shall have been granted by the superintendent of public instruction.") Rule 3301-31-02(D)(1) requires a minimum enrollment of 60 pupils for a charter, but there may be an initial enrollment of 15 for the first year of operation, with annual increases until the minimum number is met. Rules 3301-31-02(E)(2)-(3). The Welsh Hills School is, accordingly, in full compliance with state board requirements. As such, it is my opinion that the school is one for which "the state board of education prescribes minimum standards" within the meaning of that language in R.C. 3327.01.

Your second question asks whether the school district may provide transportation to children living within the two mile limitation set out in R.C. 3327.01. In 1968 Op. Att'y Gen. No. 68-156 at 2-195, it was stated that R.C. 3327.01 makes it "optional [for the districts] to transport elementary students who live within two miles of their schools." I concur in that conclusion. Thus, it is my opinion that a local school board is authorized to transport students living within the two-mile limitation found in R.C. 3327.01. For the same reasons, it is my opinion that, under R.C. 3327.01, the board may choose to transport students to a nonpublic school even if such transportation would require more than thirty minutes of direct travel time.

Your final inquiry asks from what distance the two miles is to be measured—that is, from the exempted village school or from the nonpublic school. As I stated earlier in this opinion, the first paragraph of R.C. 3327.01 provides for the transportation of students living more than two miles from the public school to which they are assigned or the nonpublic school which they attend. In the case of a nonpublic school, then, R.C. 3327.01 clearly measures the two miles from the residence of the child to the nonpublic school which the child attends.

Accordingly, it is my opinion, and you are advised, that:

1. A board of education must provide transportation for children from grades kindergarten through eight who live more than two miles from the nonpublic school which they attend when such school is in compliance with the rules promulgated by the State Board of Education pursuant to R.C. 3301.07(D), unless such transportation is found to be unnecessary or unreasonable or would require more than thirty minutes of direct travel time. The local board of education has the option of providing transportation for students living less the two miles from such

school or more than thirty minutes from such school. R.C. 3327.01.

2. The two-mile limitation set out in R.C. 3327.01 is measured from the school which the child attends, in the case of nonpublic schools, and from the school to which the child is assigned by the board of education, in the case of public schools.