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EDUCATION, BOARD OF—MAY AUTHORIZE SCHOOL BUSES TO LEAVE PUBLIC HIGHWAY AND ENTER PRIVATELY OWNED ROAD—PURPOSE, TO TRANSPORT SCHOOL CHILDREN WHO RESIDE IN HOMES ABUTTING HIGHWAY—SECTION 4855 G. C.

SYLLABUS:

A board of education may, pursuant to Section 4855, General Code, authorize its school buses to leave a public highway and enter a privately owned road for the purpose of transporting school children who reside in homes abutting same.

Columbus, Ohio, January 24, 1950

Hon. Harold K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir :

Your letter requesting my opinion reads as follows :

“The question has been asked of me by two of our local school districts if a school bus would have a right to leave a public highway and enter a community which has only private roads to pick up school children.

“Section 4855 is the section of the Code having to do with transportation of pupils and, of course, it does not state that the bus must be operated only on the public highways. In fact, it mentions nothing regarding whether the bus shall be operated on public highways only or public and private highways.

“The Board felt that if they operated on privately owned roads they might become liable in case of an accident.

“Will you therefore kindly advise me if a Board of Education of a local school district has authority under Section 4855 to have their school bus proceed off from a public highway and on to a privately owned road to pick up elementary pupils residing on a privately owned road.”

I must assume that when you say “community which has only private roads” you mean roads not open to the general public within the meaning of the highway system of Ohio and that such roads are for the use of abutting property owners. I must further assume that those entitled to transportation in school buses live in property located upon said road.

In Ohio Jur., Vol. 15, at page 78, it is said :

“The owners of subdivision of land to which an easement of way is appurtenant may use the right of way. Both the owner of the easement and those lawfully visiting his premises have a right of ingress and egress over the way. It has been suggested that an easement of way may be used by members of the family of the owner thereof, and by tradesmen supplying his family’s wants and necessities.”

Section 4855, General Code, reads as follows :

“In all city, exempted village and local school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education shall provide transportation for such pupils to and from school except

when *in the judgment of such board of education*, confirmed, in the case of a local school district, by the county board of education, or, in the case of a city or exempted village school district, by the judge of the probate court, that such transportation is unnecessary.

“In all city, exempted village and local school districts the board of education may provide transportation for resident high school pupils to the high school to which they are assigned.

“In all city, exempted village and local school districts the board of education shall provide transportation for all children who are so crippled that they are unable to walk to the school to which they are assigned. In case of dispute whether the child is able to walk to the school or not, the district health commissioner shall be judge of such ability.

“When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board of education not later than ten days after the beginning of the school term.” (Emphasis added.)

In Opinion No. 7368, Opinions of Attorney General for 1944, page 745, the then Attorney General held:

“Under the provisions of Section 4855, General Code, the local board of education or the county board of education, when it is concerned, has discretionary power to determine how near a bus transporting pupils may pass the residence or private driveway of such pupil. Such board, when transportation is provided, in making its decision, must employ a rule of reason commensurate with the circumstances.”

In so far as any liability of the board growing out of an accident on such privately owned roads, your attention is directed to the case of *Shaw v. Board of Education*, 17 O. L. A. 588, in which the court held in the 6th branch of the syllabus:

“A board of education cannot be sued in a tort action, in the absence of statutory authority.”

In view of the foregoing, you are therefore advised that a board of education may, pursuant to Section 4855, General Code, authorize its school buses to leave a public highway and enter a privately owned road for the purpose of transporting school children who reside in homes abutting same.

Respectfully,

HERBERT S. DUFFY,
Attorney General.