

forth. In 1890 Amelia C. Walker, widow of the said John H. Walker, acquired the leasehold estate, and in 1915 she acquired the fee from the state of Ohio.

In my opinion, the abstract shows a sufficient title to be in the name of Edward H. Walker on the date of the abstract, subject to the taxes for the last half of the year 1920, amounting to \$47.03, which are unpaid and a lien. The taxes for the year 1921 are also a lien.

You have further submitted encumbrance estimate No. 2010 which contains a certificate of the department of finance to the effect that there is an unincumbered balance in the proper appropriation to cover said purchase.

You have also submitted a deed executed by Edward H. Walker conveying said premises to the president and board of trustees of Ohio University, which, in my opinion, is sufficient to convey the title unto the said grantee.

The abstract, encumbrance estimate and deed are being transmitted to the office of the auditor of state.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2359.

APPROVAL, BONDS OF EAST PALESTINE CITY SCHOOL DISTRICT IN AMOUNT OF \$26,500.

COLUMBUS, OHIO, August 23, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2360.

BOARD OF EDUCATION—VILLAGE OR CENTRALIZED VILLAGE SCHOOL DISTRICT—WHEN BOARD AUTHORIZED TO PROVIDE TRANSPORTATION TO HIGH SCHOOL OF ANOTHER DISTRICT—BOARD MAY DESIGNATE HIGH SCHOOL IN ANOTHER DISTRICT—WHEN PUPIL CAN SELECT SUCH HIGH SCHOOL.

1. *Under the provisions of House Bill No. 216, effective August 16, 1921, the board of education of any village or wholly centralized village school district is authorized to provide transportation to a high school in another district, if none is maintained in a given district, or to a high school in another district of a higher grade than the one maintained in a given district, for those pupils who are entitled to have their tuition in high schools paid by the board of education of the district in which the pupils reside, but such board of education is not compelled to provide such transportation.*

2. *A board of education may designate the high school to be attended in another school district where it makes a tuition contract with another board of education under the provisions of sections 7734 or 7750 of the General Code, but*

if no tuition agreement is entered into with another board of education, the high school to be attended can be selected by the pupil holding the diploma.

COLUMBUS, OHIO, August 24, 1921.

HON. CARL P. DUNIFON, *Prosecuting Attorney, Van Wert, Ohio.*

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

- “1. Under the present school laws of Ohio, are boards of education of rural school districts not having a high school compelled to transport pupils of such districts who are eligible to high school, to some such school?
2. May the pupil select or the board designate the high school to be attended?”

The following sections of House Bill 216 (appearing in 109 O. L., p. 288, effective on and with August 16, 1921) are pertinent:

“*Section 7749-1:* The board of education of any village or wholly centralized rural school district may provide transportation to a high school in another district if none is maintained in the given district, or to a high school in another district of higher grade than the one maintained in the given district, for such children resident of the district as are entitled to have their tuition in high school paid by the given board of education.”

“*Section 7749-2:* A board of education in a district which does not maintain a high school and which pays the tuition of a child resident of the district in a high school in another district, or a board of education which pays the tuition of a child resident of the district in a high school in another district of higher grade than that maintained in the given district may furnish the cost of such child’s room and board while attending such school or a part of such cost, provided such amount is less than the cost of transportation of such child and provided such action is approved by the county board of education.”

Bearing upon your first question as to whether boards of education are compelled to transport pupils eligible to high school to a high school maintained in another district, when the board of education of the district where such pupils reside does not maintain a high school, a careful reading of section 7749-1 G. C. shows the use of the word “may” and not “must” or “are compelled.” The effect of this language of this section is that the board of education of any village or wholly centralized rural school district is authorized by law to provide transportation to a high school in another district, if in the judgment of the board itself the same should be done. On the question of furnishing the cost of a child’s room and board while attending high school in another district, section 7749-2 G. C. provides that in addition to the action of the local board of education in the affirmative, such action must also have the approval of the county board of education. Evidently the intention of the General Assembly in enacting 7749-1 and 7749-2, as it reads in House Bill 216, was to give boards of education authority (which they did not have before) to provide transportation for high school pupils to a high school in another district if there was no high school maintained in the resident district.

It had been previously held by this department, in Opinion No. 635, ren-

dered under date of September 22, 1919, (Vol. 2, Opinions of the Attorney-General for 1919) that there was no authority for a board of education to provide high school transportation outside of its own district, and it must be presumed that the legislature desired to have the law corrected and that boards of education desiring to do so should in the future be authorized to provide transportation for high school pupils to another district if the board of its own accord decided that such action was advisable under the circumstances in each case.

In your second question you desire to know whether "pupils may select or the board designate the high school to be attended," where the board of education in a rural district does not maintain a high school and it is desired to use a high school in an adjoining district. Upon this question attention is invited to the following sections of the law, viz., 7747, which provides:

"Tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. * * * " The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion, which shall entitle the holder to admission to any high school. * * * (109 O. L., p. 275)

Section 7734 G. C. reads:

"The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expense so incurred shall be paid out of the school funds of the district sending such pupils."

Section 7750 G. C. provides:

"A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such notice to be filed not less than five days previous to the beginning of attendance."

In construing these sections of the General Code, when considering a question very largely similar to the one which you submit, the following holding was made in opinion 984, appearing at page 165, Vol. I, Opinions of the Attorney-General for 1920, the syllabus reading as follows:

"Under the provisions of section 7734 G. C. the board of education of a school district may lawfully contract with the board of education

of another district or districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.

Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of section 7736 G. C. and section 7747 G. C. are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another board of education where a contract is had with more than one board.

Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contract. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school can be selected by the pupil holding a diploma."

In reply to your specific inquiries, then, you are advised:

1. Under the provisions of House Bill 216, effective August 16, 1921, the board of education of any village or wholly centralized village school district is authorized to provide transportation to a high school in another district, if none is maintained in a given district, or to a high school in another district of a higher grade than the one maintained in a given district, for those pupils who are entitled to have their tuition in high schools paid by the board of education of the district in which the pupil resides, but such board of education is not compelled to provide such transportation.

2. A board of education may designate the high school to be attended in another school district where it makes a tuition contract with another board of education under the provisions of sections 7734 or 7750 of the General Code, but if no tuition agreement is entered into with another board of education, the high school to be attended can be selected by the pupil holding the diploma.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2361.

CORPORATIONS—WHERE MISTAKE IN SWORN RETURN OF CORPORATION MADE BY ITS OFFICERS AS TO ITS LIABILITIES AND CREDITS—HOW MISTAKE MAY BE CORRECTED—THE HOUSTON FARM COMPANY.

1. *Where the officers of a corporation base their valuation of the mortgages, notes, accounts, etc. of the corporation upon a mistake as to facts reflecting upon such value, the sworn return of the corporation does not preclude it from making a complaint before the board of revision and from appealing to the tax commission*