3678.

APPROVAL, RESERVOIR LAND LEASE IN LICKING COUNTY, FOR THE RIGHT TO OCCUPY AND USE FOR COMMERCIAL DOCKLANDING PURPOSES.

COLUMBUS, OHIO, December 24, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication over the signature of the Chief of the Bureau of Inland Lakes and Parks, submitting for my examination and approval a reservoir land lease executed by the Conservation Commissioner to one R. Wilke of Columbus, Ohio. This lease, which is one for a term of fifteen years, and which provides for an annual rental of fifty dollars, payable semi-annually, leases and demises to the lessee above named the right to occupy and use for commercial docklanding purposes, the inner slope and water-front of the northerly embankment of Buckeye Lake, that lies immediately in front of the west-half of Embankment Lot No. 57 of lots east of Sayre's Boat-Landing, as laid out by the Ohio Canal Commission in 1905, and being part of the Southwest Quarter of Section 13, Town 17, Range 18, Licking County, Ohio, and being a renewal of a portion of the leasehold originally granted to E. G. Miller by lease dated August 14, 1906; also permission to maintain the present dock-house building now located upon the docklanding of the lessee herein named.

Upon examination of this lease, I find that the same has been properly executed by the Conservation Commissioner on behalf of the State of Ohio and by R. Wilke, the lessee therein named. I further find, upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with Section 471, General Code, under the authority of which these leases are executed, and with other statutes relating to leases of this kind.

I am, therefore, approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

---

3679.

TUITION—CHARGEABLE NON-RESIDENT PUPILS—SECTION 7736 AND 7747 GENERAL CODE—ACTUAL VALUE OF PROPERTY DEFINED—CONTRACT BETWEEN SCHOOL DISTRICTS FOR ATTENDANCE OF NON-RESIDENT PUPILS.

*SYLLABUS:*

1. *The actual value of the property used in conducting the schools of a district for the purpose of establishing a basis for the computation of interest and depreciation charges to be taken into consideration in determining the proper*

*amount of tuition to be charged for non-resident pupils, as provided by Sections 7736 and 7747, General Code, should be fixed by the board of education of the district where the pupils attend school, in the exercise of its sound discretion.*

*2. By the use of the clause "actual value of all property used in conducting said elementary (or high) school" as used in Section 7736 and Section 7747, General Code, it is meant that all property both real and personal used for the purpose should be considered. "Actual value" as there used, means fair market value, not at a forced sale, but such a price as would probably result from negotiations between a willing seller and a willing buyer. For practical purposes, the actual value of property used in conducting elementary or high schools within the meaning of the clause as used in Sections 7736 and 7747, General Code, may be regarded as the cost of replacing the property at the current market price for like property, after making due allowance for depreciation as shown by the present condition of the property.*

*3. Contracts may legally be made by a board of education of a school district with the board of another district for the admission of any or all of the resident pupils, either elementary or high school pupils of the one district into the schools of the other district, upon such terms and the payment of such tuition as may be agreed upon between the board of education of the two districts, so long as the tuition provided for in the contract is no more than that fixed by the provisions of Sections 7736 and 7747 of the General Code.*

COLUMBUS, OHIO, December 24, 1934.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

> "A number of requests have been made recently to our department concerning the computation of tuition costs charged for the attendance of non-resident pupils. Most of the difficulties center around the clause contained in Section 7736 and 7747 of the General Code, relating to the 'depreciation charges' to be included in computing the gross cost of providing the education for which the tuition is charged. This problem involves the meaning to be placed upon the actual value of the school property upon which the depreciation is charged.
>
> Another question with which we are confronted frequently, regards the legality of a board of education to contract with another board or boards of education for the schooling of their pupils at a fixed sum per pupil per year prior to the time such schooling is provided.
>
> In view of these difficulties, and for the purpose of uniform administrative procedure, we would appreciate your opinion upon the following questions:
>
> 1. How should the actual value of all property used in conducting the schools of a district be determined for establishing the base upon which depreciation charges not exceeding five per cent per annum may be charged in computing school tuition costs as provided in Section 7736 and Section 7747 of the General Code?
>
> 2. What legal construction should be placed upon the phrase

'actual value of all property used in conducting such elementary (or high) schools?'

3. Is it illegal for the board of education in District A to contract with the board of education in District B, for the schooling of the elementary or high school pupils residing in District A, at a fixed sum per month or per annum, which sum may be either more or less than the actual cost as determined under Section 7736 and Section 7747 of the General Code, and which charge may be established prior to the time such service is rendered?"

As pertinent to your first two questions, the material portions of Section 7736, General Code, which pertain to the manner of computing the per capita tuition for elementary school pupils who attend school in a district other than the one in which they reside, in the absence of an agreement therefor providing otherwise, and Section 7747, General Code, making similar provisions for the tuition of high school pupils, are as follows:

Sec. 7736.

"Such tuition shall be paid from either the tuition or the contingent fund, and the amount per capita must be ascertained by dividing the total expenses of conducting the elementary schools of the district attended, exclusive of permanent improvements and repairs, said total expenses to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting said elementary school by the net annual enrollment in the elementary schools of the district, * * *."

Sec. 7747.

"The 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. An attendance any part of the school month shall create a liability for the entire school month, unless the annual session is terminated before the end of a full school month. No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repair, said total expenses to include interest charges not exceeding five percent per annum and depreciation charges not exceeding five per cent per annum based upon the actual value of all property used in conducting such high school by the net annual enrollment in the high school. * * *"

The clause, "said total expenses to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting said elementary (or high) school" was inserted in both statutes in 1917. (107 O. L., 621-625.) Prior to that time no provision was made for including within the total expense of conducting a school, an allowance for capital investment for the purpose of reimbursing a school district by way of tuition for the schooling of pupils not residing in the district. The manifest purpose of

amending the statute in this respect was to provide definite and express authority for the inclusion within the total expense of maintaining the schools some credit for original investment, as clearly, this is as much an expense of maintaining the schools as are heat, light and teachers' salaries and other running expenses. The legislature saw fit to fix as a maximum charge for capital investment five per cent for interest and five per cent for depreciation, in all, ten per cent of the "actual value" of the school plant or all the property used in conducting the school. This would include both real and personal property.

The "actual value" of the property upon which the interest and depreciation charges are based, manifestly should be determined and fixed by the authorities in charge of the school where the pupils attend school, as they are the persons who are in the best position to know what the value of the property actually is. The law contemplates, of course, that the power and discretion thus reposed in these school authorities will not be abused in the fixing of the actual value of the property involved.

Just what is meant by the term "actual value" is not stated in the statutes and neither the courts of Ohio nor this office have formally passed upon the matter. The ordinary popular meaning generally attributed to the word "actual" is "real", and it is so defined by lexicographers. Similarly, the "value" of an article is generally understood to be its worth. One of the definitions given by dictionaries for the word "value" is "intrinsic worth" or "market value."

One of the well established rules of statutory construction given by Black in his work on Interpretation of Laws, page 141 is:

> "Words used in a statute are to be read in the natural and ordinary sense given to them customarily by those who use the language with propriety; the approved popular meaning being given to words of common speech and the approved special meaning to technical terms or words of art, unless there is reason to believe, from the face of the statute, that the words were intended to bear some other meaning."

The same rule is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 358, as follows:

> "Words in common use should be taken in their common signification."

The courts of Ohio have applied this rule in a number of cases. *Allen* vs. *Little,* 5 Ohio, 65; *State* vs. *Peck,* 25 O. S., 26.

I know of no reason why this rule does not have application in construing the statutes here under consideration. Courts generally, have regarded the term "actual value" as being synonymous with cash value or market value. In the case of *Cummings* vs. *Merchants National Bank,* 101 U. S. 153-162, it is said:

> "The phrases 'salable value', 'actual value', 'cash value' and others used in the directions to assessing officers all mean the same thing and are designed to effect the same purpose."

In *Sacramento Southern R. R. Co.* vs. *Helborn,* 156 Calif. 408-414, 104 Pac. 979, it is held:

> "The expressions 'actual value', 'market value', or 'market price', when applied to any article mean the same thing. They mean the price or value of the article established or shown by sales, public or private in the way of ordinary business."

See also *Wood* vs. *Sycamore School District,* 193 Pac. 1049, 108 Kans. 1; *Tyson Creek R. R. Co.* vs. *Empire Mill Company,* 174 Pac. 1004-1006, 31 Idaho, 580; *State* vs. *Hiblett,* 288 Pac. 181-185, 87 Mont. 403; *Safford* vs. *Peck,* 27 Atl. 1057-1058, 62 Conn. 510; *Murray* vs. *Stanton,* 99 Mass. 345-348.

In *Central Union Trust Company of New York* vs. *Edwards,* 287 Fed. 324-327, it is stated:

> "Under Revenue Act 1916, Sec. 407, levying an excise tax on corporations measured by the fair value of their capital stock, the phrase 'fair value' does not import guess work, and unless incompetence or worse be imputed to the assessor, is the exact equivalent of the phrase 'actual value'."

In a recent Texas case, *Niagara Fire Ins. Co.* vs. *Pool,* 31 S. W., 2nd. 850-852, it is stated:

> "Personal effects comprising furnishings of household do not for the most part have an accountable market value, and this value must necessarily be fixed by replacement cost with due allowance for depreciation or by their intrinsic value. The term 'actual value' is broad enough to include 'market value' and 'intrinsic value'."

Clearly, the term "actual value" as used in Sections 7736 and 7747, General Code, does not mean original cost nor does it mean what the article would sell for at a forced sale. It means fair market value, in my opinion, or for practical purposes, its replacement value at the moment, in its present condition. The present "actual value" of the property of school districts used in the conduct of a school may be arrived at by a consideration of what it would cost to replace it in the current market after making due allowance for depreciation, if any, as evidenced by its present condition.

I come now to a consideration of your third question.

Section 7681, General Code, provides that the schools of each district shall be free to all youth of school age who reside in the district. Section 7682, General Code, provides:

> "Each board of education may admit other persons upon such terms or upon the payment of such tuition *within the limitations of other sections of law as it prescribes.* * * *" (Italics the writer's.)

Section 7734, General Code, provides in part:

> "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. * * *"

Section 7750, General Code, 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. * * *"

Sections 7736 and 7747, General Code, fix the method of computing the proper tuition charge for pupils attending school, either elementary or high school, outside the district of their residence. These sections make no express mention of providing for a different rate by contract. Section 7747, General Code, however, which relates to high school tuition, provides that "no more" shall be charged than the amount arrived at by the method fixed by the statute.

It is well to note that the clause "within the limitation of other sections of law" as found in Section 7682, General Code, was inserted therein by amendment of the statute in 1921, at the same session of the legislature during which Section 7736, and Section 7747, General Code, were last amended.

All the sections of the code mentioned above, relate to the same subject matter, and therefore, in accordance with well settled rules of construction, should be read and interpreted together. By so doing it clearly appears that boards of education may contract with other boards of education for the schooling of resident pupils of their districts on such terms as may be agreed upon, so long as the tuition charge is within the limitations of law. In other words, the tuition charge may be less but not more than that provided by Section 7736 and Section 7747, General Code.

A number of opinions of this office have considered these questions. In an opinion of a former Attorney General it is held:

"A board of education of any district may contract with the board of another district for the admission of pupils in the other district."

See Opinions of the Attorney General for 1916, page 1617.

In 1920, prior to the amendment of Section 7682, General Code, as noted above, the then Attorney General held:

"1. 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.

2. 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."

To practically the same effect are opinions found in the published Opinions of the Attorney General for 1926, at page 422 and for 1932 at page 683.

In the published Opinions of the Attorney General for 1933 at page 1789, will be found an opinion which holds as follows:

"1. When two school districts contract with each other for the admission of pupils residing in one district to the schools of the other, and said contract fixes the rate of tuition for said pupils to be paid by the district of the pupils' residence to the district where they attend school, consideration should be given in the fixing of that rate to the limitations on the amount of tuition which may be charged as fixed by Sections 7736 and 7747, General Code.

2. Where such a contract provides for the payment of tuition in excess of the limitations fixed therefor by Sections 7736 and 7747, General Code, the contract is unauthorized and void, and if the children attend school in pursuance of the contract, the amount of tuition that should be paid is that fixed by Sections 7736 and 7747, General Code."

I am therefore of the opinion, in specific answer to your questions:

1. The actual value of the property used in conducting the schools of a district for the purpose of establishing a basis for the computation of interest and depreciation charges to be taken into consideration in determining the proper amount of tuition ot be charged for non-resident pupils, as provided by Sections 7736 and 7747, General Code, should be fixed by the board of education of the district where the pupils attend school, in the exercise of its sound discretion.

2. By the use of the clause "actual value of all property used in conducting said elementary (or high) school" as used in Section 7736 and Section 7747, General Code, it is meant that all property both real and personal used for the purpose should be considered. "Actual value" as there used, means fair market value, not at a forced sale, but such a price as would probably result from negotiations between a willing seller and a willing buyer. For practical purposes, the actual value of property used in conducting elementary or high schools, within the meaning of the clause as used in Sections 7736 and 7747, General Code, may be regarded as the cost of replacing the property at the current market price for like property, after making due allowance for depreciation as shown by the present condition of the property.

3. Contracts may legally be made by a board of education of a school district with the board of another district for the admission of any or all of the resident pupils, either elementary or high school pupils of the one district into the schools of the other district, upon such terms and the payment of such tuition as may be agreed upon between the board of education of the two districts, so long as the tuition provided for in the contract is no more than that fixed by the provisions of Sections 7736 and 7747 of the General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*