of the Attorney General for 1929, page 1497, concerning the general subject here included, the syllabus of which reads:

> "It is unlawful for a member of a city council who is also agent for a surety company, to execute bonds on behalf of such surety company to secure the performance of contracts entered into with the city upon whose council he serves."

I realize that it would seem to be a harsh rule to hold in some situations that a state of facts such as is here under consideration is in violation of the provisions of Section 3808 of the General Code. Nevertheless, the legislative policy of this state is clearly established to the effect that a municipal officer may not be financially interested, directly or indirectly, in expenditures of money by the municipality.

In view of the conclusion reached, it is not necessary to consider the possible application of Section 12912, General Code.

In specific answer to your inquiry, you are advised that a member of a municipal council may not act as the president of an insurance agency which furnishes surety bonds to such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2790.

TRANSPORTATION OF PUPILS—CONVEYANCE MUST PASS WITHIN A HALF MILE OF RESIDENCE—ELEMENTARY SCHOOL PUPIL REQUIRED TO ATTEND SCHOOL TO WHICH ASSIGNED, UNLESS—A GIRL NOT AUTHORIZED TO DRIVE A SCHOOL WAGON OR MOTOR VAN.

SYLLABUS:

1. *By force of Section 7731-3, General Code, a county board of education is not authorized to issue a certificate authorizing the holder thereof to drive a school wagon or motor van, to a girl.*

2. *In the absence of an abuse of discretion on the part of the board of education making the assignment, an elementary school pupil is required to attend the school to which he is assigned by the board of education of the district of his residence, unless the school is more than one and one-half miles from his home and there is a nearer school either within or without the district, or pay his own tuition in the school of another district which he chooses to attend and which is willing to receive him.*

3. *If circumstances are such that a board of education is required, under the law, to furnish transportation for a pupil attending the public schools the board is required, in furnishing such transportation, to cause the conveyance to pass within one half mile of the residence of each of the pupils to be transported, or the private entrance to such residence, else transportation as the law contemplates, is not being furnished, and the parent or person in charge of the pupil may furnish transportation for the pupil and recover from the board of education for such transportation in accordance with Section 7731, General Code.*

COLUMBUS, OHIO, January 2, 1931.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

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

"FIRST

The Code provides that a driver's certificate may be given by the board of education to a boy over 16 years of age attending high school and that he may transport pupils by this authority.

Does this include a girl?

SECOND

A board of education suspended a district school and assigned the pupils to another.

A pupil living 75 feet less than two miles from the school so assigned has been ordered to attend this school when a school bus to another district passes within a few hundred yards within his home, and the board refuses to permit him to attend the school where the transportation is available.

Are there any means available to compel the board to consider the element of convenience as well as necessity?

THIRD

Under Section 7731 a board of education is required to furnish transportation unless the board determines it to be impracticable.

The facts involved are that a local board transports pupils in another district to within a mile of their residences and there lets them walk home. There is no valid reason for this, but is not their determination final, or is there some manner of appeal?"

The answer to your first question depends entirely upon the construction to be placed on the language of Section 7731-3, General Code, wherein a county board of education is authorized to grant a certificate for the driving of a motor van or school wagon to "a boy who is at least sixteen years of age, and who is attending high school." The pertinent part of Section 7731-3, General Code, reads as follows:

"When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. Provided, however, that a county board of education may grant such certificate to a boy who is at least sixteen years of age and who is attending high school. * * * "

One of the most difficult tasks courts have to perform is to construe and apply statutes which are capable of one or several constructions, with an eye single at all times to the rule that the intention of the Legislature in enacting the statute shall prevail. Oftentimes the context of a statute is such as to afford little or possibly no aid in the interpretation of words susceptible of more than one meaning. Oftentimes the language of a statute affords little, if any, guidance to determine the intention of the Legislature.

On casual consideration it would appear that there could be little doubt as to the meaning of the word "boy" as used in the above statute. Everyone knows that boys are not girls, and when the word is used in ordinary conversation it is not meant to include girls. Following, then, the well known rule of statutory construction that words are to be used in their usual and most known signification, in the absence of anything in the context to indicate a different sense, it would seem, upon the proper

construction of this statute, it could not be said to authorize the granting of a certificate, such as is spoken of, to a girl.

Some consideration, however, must be given to the statutory rule of construction of statutes as set forth in Section 27 of the General Code, which reads in part, as follows:

> "In the interpretation of parts first and second, unless the context shows that another sense was intended, * * * words of the present include a future tense, in the masculine, include the feminine and neuter genders, and in the plural include the singular and in the singular include the plural number; * * * "

The above statute was formerly Section 23 of the Revised Statutes, first adopted as a part of the Statutes of 1880, by which codification the statutory law of Ohio was classified as Part I, Political; Part II, Civil; Part III, Penal, and Part IV, Remedial.

Section 7731-3, General Code, was not then in existence but was enacted in 1921 as a part of an act relating to the transportation of school pupils, and naturally an act of its subject matter fell into the class of laws known as Civil, embraced within part 2 of the General Code.

If this statutory rule as contained in Section 27 of the General Code be strictly followed, the word "boy" as used in Section 7731-3, General Code, must be held to include girl, girl being the feminine of boy. If that is the proper construction, as the statute stands, it apparently would have been necessary, in order to limit the meaning of the word "boy" strictly to its masculine meaning, for the Legislature to have negatived the issuing of a certificate to a girl by some appropriate words in the statute.

I do not understand it to be necessary in all cases, in order to show that another sense was intended, to negative the inclusion of the feminine gender in masculine words or the masculine gender in feminine words, as the case may be, when a generic term in general use might well have been used to denote both genders if such had been the intention.

It is a well known fact that both boys and girls attend high school. This no doubt was within the knowledge of the members of the Legislature at the time of the enactment of this statute.

It is also a matter of common knowledge that the word *pupil* is a commonly used word to designate any person who attends high school, either a boy or a girl, and it seems clear that if the Legislature had intended to authorize a county board of education to issue a certificate such as is here under consideration to either a boy or a girl attending high school, the word pupil would have been used instead of the word *boy,* and I am therefore of the opinion that the statute as it stands, does not authorize a county board of education to grant a certificate, such as is mentioned, to a girl.

With reference to your second question, it is provided by Section 7730, General Code, that a board of education of a rural or village school district may suspend temporarily or permanently any school of the district for any of the reasons enumerated in the statute. It is further provided that whenever any school is suspended the board of education shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such other school or schools as may be named by said board.

Section 7764, General Code, provides that a child, in his attendance at school, shall be subject to assignment by the principal of the public school or superintendent of schools, as the case may be, to the class in an elementary school, high school or other school suited to his age and state of advancement and vocational interest, within the

school district; or, if the schooling is not available within the district, without the school district "provided the child's tuition is paid and provided further that transportation is furnished in the case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school."

By later legislation, it is provided that in no case is a board of education required to transport high school pupils unless the same is deemed and declared to be advisable and practicable by the county board of education. A board of education is not required to transport elementary school pupils who reside less than two miles from the school to which they are assigned.

The Legislature has reposed in boards of education full authority to make assignments of pupils to particular schools and has provided no means of appeal from the decision of the board of education in that respect, or any means of reviewing the judgment of the board on these questions. A pupil may attend a school in another district rather than the one in his own district to which he has been assigned providing the board of education of the other district chooses to admit such pupil into its schools and the pupil or his parents pays his tuition in the school which he chooses to attend, but he can not compel the board of education to pay his tuition in the schools of another district if he has been assigned by the board of education of the district of his residence to a school in that district, unless he comes within the provisions of Section 7735, General Code, which provides:

> "When pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another school district, in all grades below the high school. In such cases the board of education of the district in which they reside must pay the tuition of such pupils without an agreement to that effect. But a board of education shall not collect tuition for such attendance until after notice thereof has been given to the board of education of the district where the pupils reside. Nothing herein shall require the consent of the board of education of the district where the pupils reside, to such attendance."

Although the Legislature, by statute, has reposed in boards of education the authority to assign pupils within their discretion to any school which, in the judgment of the board the pupil should attend, and has, by failing to provide any means of review or right of appeal in such cases, made the judgment of the board final, the discretion thus reposed in a public officer, must not be abused. That is to say, a judgment or order of the board which is clearly erroneous or against the logic and effect of the facts, not justified by and clearly against reason and evidence, would be held to be an abuse of discretion. Discretion, when applied to public functionaries, is said to refer to the power or right conferred upon them by law of acting officially in certain circumstances according to the dictates of their own judgment or conscience, uncontrolled by the judgment or conscience of others. (Black's Law Dictionary). The lawful exercise of discretion involves a fair consideration of all peculiar features of the particular question to the disposition of which it is to be applied. Discretion, when vested in an officer, does not mean absolute or arbitrary power. It must be exercised in a reasonable manner and not maliciously, wantonly or arbitrarily, to the wrong and injury of another. *Taylor* vs. *Robertson,* 16 Utah, 330; 52 Pac., 16.

The courts are always open to all persons to correct any abuse of discretion exercised by public officials. The Attorney General, however, could not and will not attempt to pass on whether or not a public official has, under a given state of facts, abused his discretion, where discretion is vested by statute in that public official to act as seems in his judgment to be for the best interests of all concerned.

Under the facts stated, therefore, in your second question, the pupil about whom you speak, is required to attend the school to which he has been assigned or pay his tuition in the school of the other district if he chooses to attend that school, unless he comes within the provisions of Section 7735, General Code, or unless circumstances and local conditions are such that a court would say the board of education has abused its discretion in assigning him to the school to which he has been assigned.

Coming now to your third question, although Section 7731, General Code, provides that a board of education shall provide transportation for elementary school pupils who live more than two miles from the school to which they are assigned, except when in the judgment of such board confirmed in the case of a school district of the county school district by the judgment of the county board of education such transportation is unnecessary, it has been held by reason of other sections of the Code which are in pari materia, that a board of education is required in all cases to furnish transportation for elementary school pupils who reside more than two miles from school or pay the parents for providing such transportation. In this connection, your attention is directed to two opinions of this office which may be found in the published Opinions of the Attorney General for 1929 at pages 1584 and 1735, which opinions are, I believe, fully dispositive of your third question. The syllabus of the first of these opinions is as follows:

> "1. Transportation to and from school must be furnished for elementary school pupils who reside more than two miles from the school to which they are assigned, or the parents or persons in charge of such pupils paid for transporting them.
>
> 2. The law requiring transportation to and from school, of elementary school pupils who reside more than two miles from the school to which they are assigned, is satisfied if the conveyance is made to run within one-half mile of a pupil's residence or the private entrance thereto.
>
> 3. If a conveyance for the transportation of elementary school pupils to and from the school is not made to run within one-half mile of the residence, or the private entrance thereto, of a pupil who lives more than two miles from the school to which he has been assigned, transportation, in the sense contemplated, is not being furnished, and the parent or person in charge of the pupil may furnish transportation for the pupil, and recover from the board of education for such transportation in accordance with Section 7731 of the General Code.
>
> 4. The statutory requirement that boards of education of rural and village school districts shall transport, to and from the schoolhouse, pupils of the district who live more than two miles from the nearest school in the district in which they reside, does not require that such transportation be furnished to children living in the district who are attending a nearer school in another district, and mandamus does not lie to compel provisions of such transportation."

The syllabus of the second opinion is as follows:

> "1. A board of education is required to furnish transportation for all elementary school pupils who live more than two miles from the school to which they have been assigned. In furnishing such transportation the board is required to cause the school conveyance to pass within one-half mile of the residence of each of the school pupils to be transported, or the private entrance to such residence, or may be made to respond for the reasonable value of such transportation in accordance with Section 7731-4, General Code,

if the parent or person in charge of such child, furnishes the transportation.

2. If a board of education determines that it is impractical and unnecessary to operate a school bus to within one-half mile of the residence of a school pupil, who is entitled to transportation to school, or the private entrance to such residence, the board cannot be compelled in an action in mandamus to operate the bus to within such one-half mile of the residence of the pupil, or the private entrance thereto, but unless the school conveyance is operated to within one-half mile of the residence of a school pupil, or the private entrance thereto, transportation as contemplated by the law is not being furnished."

Based on the foregoing discussion, I am of the opinion, in specific answer to your questions:

First, in accordance with the terms of Section 7731-3, General Code, a county board of education is not empowered to issue a certificate to a girl authorizing her to drive a school wagon or motor van.

Second, in the absence of an abuse of discretion on the part of the board of education making the assignment, an elementary school pupil is required to attend the school to which he is assigned by the board of education of the district of his residence, unless the school is more than one and one-half miles from his home and there is a nearer school either within or without the district, or pay his own tuition in the school of another district which he chooses to attend and which is willing to receive him.

Third, if circumstances are such that a board of education is required under the law to furnish transportation for a pupil attending the public schools, the board is required, in furnishing such transportation, to cause the conveyance to pass within one-half mile of the residence of each of the pupils to be transported, or the private entrance to such residence, else transportation as the law contemplates, is not being furnished and the parent or person in charge of the pupil may furnish transportation for the pupil and recover from the board of education for such transportation in accordance with Section 7731, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2791.

SENTENCE OF PRISONER—CONVICTED OF TWO OR MORE FELONIES SERVING SENTENCES CUMULATIVELY BY ORDER OF COURT CONTINUOUS TERM—WHEN ELIGIBLE FOR PAROLE.

SYLLABUS:

Where one is convicted of two or more separate felonies and the court orders said sentences to be served cumulatively, by the terms of Section 2166 of the General Code, the prisoner shall be held to be serving one continuous term and will not be eligible to parole until he has served the aggregate of the minimum terms.

COLUMBUS, OHIO, January 2, 1931.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads: