2463.

TRANSPORTATION OF PUPILS DISCUSSED—AUTHORITY OF COUNTY BOARD OF EDUCATION DISCUSSED.

SYLLABUS:

1. *A county board of education is without authority to order payment of the reasonable value of the cost of transportation of pupils to high school where no obligation rested on the local board of education to provide such transportation at the time the transportation was furnished.*

2. *No obligation rests on a local board of education in districts other than rural districts, which maintain high schools and in which the elementary schools are centralized and the transportation of pupils provided for, to provide transportation for resident pupils who attend high school unless the local board chooses to furnish such transportation, or unless the county board of education deems and declares such transportation to be advisable and practicable.*

3. *A county board of education may not pass a resolution deeming and declaring transportation of high school pupils in a district of the county district to be practicable and advisable, obligating the local district to pay parents for transporting their own children to high school during a period prior to the date of said resolution.*

4. *The resolution of the county board of education deeming and declaring the transportation of high school pupils in a district of the county school district to be advisable and practicable is not and cannot be so framed as to make the same retroactive.*

5. *It is not necessary for the county board of education, when determining whether or not transportation for high school pupils in local districts is advisable and practicable, to take up separately the case of each individual pupil about to attend high school. Such determination may take the form of a resolution deeming and declaring it to be advisable and practicable for a local board of education to provide transportation for all the children of the district, who are entitled to attend high school.*

6. *In cases where local boards of education are by reason of their own action, or that of the county board of education, obligated to furnish transportation for high school pupils and fail to do so, and for that reason a parent is authorized to furnish such transportation and be paid the reasonable value thereof, the parent should not be paid if in fact he has been put to no expense in the transportation of the said child. If it appears that said child has been transported by some third party without any expense whatever to the parent, the parent cannot recover for such transportation and the local board of education is not authorized to pay him for such transportation.*

COLUMBUS, OHIO, August 20, 1928.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnelsville, Ohio.*

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

> "In Deerfield Township of this County for the school years of 1925-26 and 1926-27, one E. P., residing in said rural township school district, which did not maintain a high school, made application to said local board of education at the beginning of each of said school years for transportation of his daughter to the nearest high school at the county seat eight miles from his residence. On each occasion the said local board, acting under Section 7749-1, G. C., refused transportation. No application was made to the county board of education on either occasion for transportation, nor did said county board

at any time deem and declare such transportation advisable and practicable. During these two school years, E. P. himself transported his said daughter to high school at said county seat, a distance of eight miles from his residence. On July 14, 1928, said E. P. appeared before said county board asking for compensation of such transportation and the county board by motion allowed said claim and directed its clerk to issue an order to the county auditor directing him to issue his warrant in favor of said E. P. for $264.00 out of the general fund of Morgan County for such transportation and for him to retain such amount from the proper funds due said rural district at the time of making the next semi-annual distribution of taxes. This was done by virtue of the Provisions of Section 7610-1, G. C.

* * *

My question therefore is: May the county board of education under authority of the provisions of Sections 7749-1 and 7610-1, G. C., legally order the payment in the manner herein above stated of compensation to a parent for transportation in cases where the local board in the exercise of its option under Section 7749-1 refuses to furnish transportation and the county board was never appealed to for the purpose of deeming and declaring such transportation advisable and practicable,—and more than one year after such parent has ceased to transport his child at the close of the school year? I have directed the county auditor to withhold the issuing of his warrant on said above order of the county board. Have I advised correctly?

Old Section 7764-1, G. C., was repealed July 10, 1925; since which time Section 7749-1 seems to be the controlling Section in regard to high school transportation. Yet notwithstanding the repeal of said Section 7764-1 our county board on July 23, 1927, passed a resolution directing Bristol Township Board of Education, Morgan County, Ohio, to pay for the transportation of a pupil to high school or for board and room in lieu thereof for the year 1926-27; this order was made upon complaint made that day to said county board by the parent of said pupil. Nothing appears of record that any request had theretofore been made to the county board on the ground that the local board had refused to furnish transportation, although I think the fact is, that the local board had refused. Similar action was taken on by the said board on September 10, 1927, directing the township boards of Bloom and Meigsville Townships to pay for the transportation of all their high school pupils for whom the grade of work to which they had been assigned is not provided within their districts for the years 1926-27 and 1927-28 or to pay board and room in lieu thereof. And again on September 17, 1927, said board by motion ordered: 'that the transportation of high school pupils residing within the districts of Morgan County which do not provide high school work suitable to the state of advancement of such pupils and concerning which similar action has not already been taken (viz., Center, Deerfield, Malta, Morgan and York Townships) be declared practicable and advisable for the school year 1927-1928 in all cases where the residences of such pupils are more than four miles from the nearest high school which offers such work, provided that it will be considered as substantially meeting the transportation requirement if such districts pay the cost of board and room, or a part of such cost in an amount to be determined by the State Department of Education when state aid allotments for the current year are made.

Inasmuch as the last paragraph of Section 7749-1 seems to contemplate action by the county board after a local board has refused transportation; may a county board legally adopt such blanket resolution? The language

of said paragraph is: 'If the transportation of a *child,* etc.' Does this not mean that in each case where transportation to a high school is desired the pupil or parent or someone acting for them must make application to a local board at a time when it is in session and that upon the refusal of such local board to provide such transportation application should be immediately made to the county board for its order and direction in the matter. In other words the powers and duties conferred upon both boards being statutory and therefore strictly construed, may the county board act upon transportation cases in any other manner than by taking up each individual case of 'a child' and deciding a question of transportation upon all the facts pertinent to that particular case?

Assuming that in a given case of a child eligible to high school upon refusal of the local board to grant its application for transportation and upon its immediate appeal to the county board said board deemed and declared such transportation advisable and practicable and thereupon said child attended high school a distance of more than four miles from its residence and during the past school year without transportation being furnished by the local board or its parents, said child being afforded transportation gratis in the vehicles of other pupils passing its home daily to and from the same high school which said pupil attended and after the close of the school year the county board of said county issues an order in favor of the parent of said child directing the county auditor to issue his warrant to pay said parent for said transportation and said county auditor being advised of the manner of said transportation as above stated, may said county auditor legally issue his warrant to said parent in compensation for said transportation?"

Section 7749-1, General Code, provides as follows:

"The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

Section 7749, General Code, referred to in Section 7749-1, supra, provides in substance that in rural school districts wherein the elementary schools are centralized and transportation of pupils provided for, and such districts maintain high schools, the pupils attending such high schools are entitled to transportation.

Section 7749-1, General Code, became effective July 10, 1925. At the time of its enactment and by the terms of the same act former Section 7764-1, General Code, was repealed. Former Section 7764-1, General Code, read as follows:

"Boards of education shall provide work in high school branches, as mentioned in Section 7648, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum, except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

During the period while Section 7764-1, supra, was in force, prior to July 10, 1925, it was obligatory on local boards of education to either furnish high school privileges within the district, or furnish transportation to a high school, or board and lodging in lieu thereof, in accordance with Section 7749-2, General Code, for all pupils, residing within the district and four miles or more from a high school, who had finished the regular elementary school curriculum and were entitled to admission to a high school.

After July 10, 1925, and during the school years of 1925-26, 1926-27, and 1927-28, the school years about which you inquire, it was optional with local boards of education in districts which did not maintain high schools in the district, as well as with those which did maintain high schools other than districts in which the elementary schools were centralized and transportation provided thereto, whether they furnished such transportation or not, unless the county board of education deemed and declared such transportation advisable and practicable, in which case it was obligatory on the local boards of education to furnish such transportation.

By two decisions of the Supreme Court of Ohio, interpreting former Section 7764-1, General Code, and related sections which are still in force, it was declared that a board of education had a choice of means, viz., that the board might either provide a high school within a distance of four miles from the residence, or furnish transportation to a high school, or provide board and lodging to the pupils in a high school. *State, ex rel Masters* vs. *Beamer et al.,* 109 O. S. 133; *Sommers* vs. *Board of Education,* 113 O. S. 177.

The Sommers case, supra, goes further and holds that if the board does not exercise any one of the choices and a parent is compelled to transport his children of compulsory school age to a high school more than four miles from his residence, he may recover in an action at law for such transportation. The fourth branch of the syllabus of the Sommers case reads as follows:

> "A parent who resides more than four miles from any high school in a rural school district who is compelled to transport his children of compulsory school age who have finished the ordinary grade school curriculum to a high school more than four miles from his residence by reason of the refusal of the local board of education and the county board of education either to provide work in high school branches at some school within four miles of the children's residence, or to transport the children to and from a high school, may recover in an action at law for such transportation."

It follows that the board might, if it chose, fail to exercise any one of the choices of means enumerated by the court and permit the parent to transport his child and thereafter pay him for such transportation.

In my opinion a board of education, after the obligation to furnish transportation is fixed, now has the same choice of means it had before Section 7764-1, General Code, was repealed. It obviously cannot be compelled to exercise any one of these choices until the obligation to furnish transportation becomes fixed, either by its own determination to furnish transportation for high school pupils or by a determination of the county board of education deeming and declaring such transportation to be advisable and practicable.

The Supreme Court in a case decided December 7, 1927, and reported in the Ohio Law Bulletin and Reporter January 30, 1928, *Board of Education of Swan Township* vs. *Cox,* 117 O. S. 406; 159 N. E. 479, after quoting the provisions of former Section 7764-1, General Code, and citing the Beamer and Putnam County cases, supra, says:

> "The statute does not in terms require that any formal request or demand be made upon the board, but it must be apparent that there could be no opportunity to the school board to exercise a choice of means unless the matter were brought to the attention of the board by a request or demand."

Likewise, it seems clear to my mind that the local board would have no opportunity under the present law to exercise a choice of means of furnishing transportation unless the matter were brought to their attention by the formal declaration on the part of the county board of education that it was deemed by it that such transportation was advisable and practicable.

While the statute does not in terms state when the county board of education should make the determination as to the advisability and practicability of a local board providing high school transportation, to interpret it so as to permit the county board to make this determination after the school year is over and thus deprive the local board of its right to exercise a choice of means of furnishing such transportation, would be unwarranted.

The county board, in my opinion, must first fix the liability on the local board and then if the local board does not furnish the transportation, or does not furnish board and lodging near a high school, and for that reason a parent is compelled to transport his child to school, he may recover therefor.

I do not think the refusal of a local board to furnish transportation is a necessary prerequisite to the county board's exercising its jurisdiction to declare transportation to be advisable and practicable. Nor would it seem necessary for the county board to take up each individual pupil's case separately. If a county board deems and declares it to be advisable and practicable for a local board, such as your Deerfield Township Rural Board of Education, to transport all its resident pupils eligible for admission into a high school to such high school and so determines by a proper resolution, it thereby fixes upon the local board the obligation to furnish such transportation, just as effectually as though it had made the determination for each individual case. Thereafter, each individual case would necessarily be required to bring itself within the terms of the determination of the county board. That is to say, it would be the duty of each parent or child to communicate to the local board the fact of readiness for high school work and the location of its residence with reference to a high school, if the order of the county board made any discrimination with respect to residence.

In the Swan Township case, supra, in speaking of the duty of boards of education to furnish transportation under former Section 7764-1, General Code, and the right of parents who transport their children, if the local boards fail to furnish transportation, to recover for such transportation, it is said as follows:

> "In order that such boards of education may have a choice of the means of discharging the duties imposed upon them, it is the duty of such children or their parents to communicate to such boards the fact of readiness for high school work and the further fact of residence more than four miles from a high school in order that the board may have an opportunity to take official action in exercising such choice of means and to make provision therefor."

Coming now to a consideration of your specific questions in the order asked, I am of the opinion that:

1. The county board of education of Morgan County having never, prior to July 14, 1928, deemed and declared the transportation of high school pupils by the Deerfield Township Rural Board of Education to be advisable and practicable, was

without authority on that date to order payment to a parent residing in said district, for the transportation of his children to high school during the school years of 1925-26, and 1926-27, and the county auditor of said county is not warranted in honoring any such order.

2. The county board of education of Morgan County School District was without authority to pass a resolution on July 23, 1927, directing the board of education of Bristol Township Rural School District to pay for the transportation of high school pupils, or for board and room in lieu thereof for the school year of 1926-27, the local board not having theretofore determined to provide transportation for high school pupils and the county board having not theretofore deemed and declared such transportation to be advisable and practicable.

3. The county board of education of Morgan County was without authority to take action on September 10, 1927, directing the local boards of education of Bloom Township Rural School District and Meigsville Township Rural School District to pay for the transportation of their high school pupils for the school year of 1926-27, the local boards of these districts having not theretofore determined to provide transportation for high school pupils and the county board having not theretofore deemed and declared such transportation to be advisable and practicable. The county board of education did have authority on September 10, 1927, to direct the local boards of Bloom Township Rural School District and Meigsville Township Rural School District, to provide transportation for high school pupils for that portion of the school year of 1927-28, following the date of said resolution, and the action of the county board so taken on September 10, 1927, obligates the local boards of Bloom Township Rural School District and Meigsville Township Rural School District to provide transportation, or board and room in lieu thereof, in accordance with the terms of the resolution passed by the county board.

4. The action of the county board of education of Morgan County on September 17, 1927, ordering "that the transportation of high school pupils residing within the districts of Morgan County which do not provide high school work suitable to the state of advancement of such pupils and concerning which similar action has not already been taken, (viz., Center, Deerfield, Malta, Morgan and York Townships), be declared practicable and advisable for the school year 1927-28, in all cases where the residences of such pupils are more than four miles from the nearest high school, which offers such work, provided that it will be considered as substantially meeting the transportation requirement if such districts pay the cost of board and room, or a part of such costs in an amount to be determined by the State Department of Education when state aid allotments for the current year are made," was legal and the effect thereof was to make it obligatory for the boards of education of the districts named in the resolution to furnish high school transportation during the school year 1927-28, from and after September 17, 1927, for all high school pupils residing in the district in accordance with the terms of said resolution.

5. It is not necessary for the county board of education, when determining whether or not high school transportation for the pupils of local districts is advisable and practicable, to take up separately the case of each individual pupil about to attend high school. Such determination may take the form of a resolution deeming and declaring it to be advisable and practicable for a local board of education to provide transportation for all the children of the district, who are entitled to attend high school.

6. In cases where local boards of education are by reason of their own action, or that of the county board of education, obligated to furnish transportation for high

school pupils and fail to do so, and for that reason a parent is authorized to furnish such transportation and be paid the reasonable value thereof, the parent should not be paid if in fact he has been put to no expense in the transportation of the said child. If it appears that said child has been transported by some third party without any expense whatever to the parent, the parent cannot recover.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2464.

DOG—ALLOWANCE OF SHEEP CLAIMS BY COMMISSIONERS—FORTY-EIGHT HOUR NOTICE OF INJURY REQUIRED.

SYLLABUS:

1. *By the terms of Section* 5840, *General Code, in order to entitle any owner of sheep killed or injured by dogs to enter a claim for damages, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.*

2. *Unless the owner of such sheep has given notice to a county commissioner in person or by registered mail, as required by Section* 5840, *General Code, within forty-eight hours after the loss or injury has been discovered, the county commissioners are without authority to allow and pay such claim.*

COLUMBUS, OHIO, August 20, 1928.

HON. E. B. UNVERFERTH, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> "We have a question here that is bothering us some and we would like to have your opinion in the matter. The facts are about these:
>
> A short time after the new law went into effect governing the allowance of claims for sheep killed and injured, some claims were filed with the county commissioners for allowance, and the trouble with them is that the commissioners were not notified, as the law provides. The township trustees were notified and an appraisement was had according to law. In fact, everything was done according to law excepting the notification of the county commissioners.
>
> Now, the question is, have the county commissioners any power to allow and pay these claims?"

The specific sections of the General Code which govern the presentation and allowance of claims for loss or injury to live stock inflicted by dogs are Sections 5840, et seq.

Section 5840 provides:

> "Any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a