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BUS TRANSPORTATION — HOW NEAR A BUS TRANSPORTING PUPILS MAY PASS RESIDENCE OR PRIVATE DRIVEWAY OF PUPIL — LOCAL BOARD OF EDUCATION, OR COUNTY BOARD WHEN CONCERNED, HAS DISCRETIONARY POWER FOR SUCH DETERMINATION — WHEN TRANSPORTATION PROVIDED, BOARD IN MAKING DECISION MUST EMPLOY A RULE OF REASON COMMENSURATE WITH CIRCUMSTANCES — SECTION 4855 G. C.

SYLLABUS:

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.

Columbus, Ohio January 6, 1945

Hon. J. Dale McNamar, Prosecuting Attorney
Newark, Ohio

Dear Sir:

This will acknowledge receipt of your recent inquiry addressed to

an interpretation of section 4855, General Code, and which questions read as follows:

“1. When an elementary school pupil lives more than two miles from the school, how near to his residence must the school bus come in order to furnish transportation?”

2. What discretion does the local board of education and the county board of education have in determining how near to his place of residence the bus must be sent?”

These questions are very similar in their nature and will therefore be considered together.

As pointed out in your communication, section 7731, General Code, was repealed by the 95th General Assembly, and was replaced by section 4855, General Code.

Section 7731, General Code, provided as follows:

“In all city, exempted village, rural and village 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 school district of the county school district, by the judgment of the county board of education, or, in the case of a city or exempted village school district, by the judgment of the probate judge, such transportation is unnecessary.

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 and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable. When local boards of education neglect or refuse to provide transportation for pupils the county board of education may provide such transportation and the cost thereof shall be paid as provided in section 7610-1, General Code.”

Section 4855, General Code, provides in part 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."

It will be noted that in section 4855, General Code, the following language was eliminated, which language was contained in former section 7731, General Code:

"* * * and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile or said residence or the private entrance thereto is unnecessary and impracticable * * *."

This brings us to a consideration of the legislative intent as reflected in the adoption of section 4855, General Code.

It will be observed that even though former section 7731, General Code, provided that transportation facilities should pass within one-half mile of the pupil's residence or private driveway, the board was still authorized to determine whether or not such service was unnecessary and impracticable, subject, however, to confirmation by the county board of education, if a local school district, or judgment of the probate court, if a city or exempted village board of education.

It will be noted that a board of education was granted a certain amount of discretionary power under former section 7731, General Code.

Section 4855-1, General Code, provides for the invocation of the jurisdiction of the county board, in certain instances, and reads in part as follows:

"If the board of education of a local school district deems the transportation, required under any provision of law, of certain children to school by school conveyances impracticable and is unable to secure what is deemed a reasonable offer for the transportation of such children the local board shall so report to the county board of education. If the county board of education deems such transportation by school conveyance practicable or the offer reasonable they shall so inform the local board and transportation shall be provided by such local board. If, however, the county board of education agrees with

the view of the local board it shall be deemed compliance with the provisions of section 4855 of the General Code, by such local board if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school at a rate determined for the particular case by the local board of education for each day of actual transportation."

A comparison of sections 7731 and 4855, General Code, reflects an intent on the part of the Legislature to remove the limitation imposed by former section 7731, General Code, upon the use of discretion of the board as to the proximity within which transportation must be furnished to pupils, and to leave such matter to the sound discretion of the board.

In addition to a compliance with the requirements of section 4855-1, General Code, the board is governed by the usual rule of law in such instances, that is, whether or not a board's acts are arbitrary, unreasonable or capricious. This question, of course, depends upon a factual situation and rests upon particular circumstances.

In this connection it would seem to be the duty of the board to make a proper provision for such transportation as the situation demanded. The furnishing of transportation should be done in a manner commensurate with the occasion of equal requirements and suitable for the occasion.

In other words, in the absence of a prescribed distance of measurement, the board under its discretionary power, when transportation is furnished, should do so in a manner equal to that which the situation requires and fully sufficient and suitable to the occasion as the case may be. By so doing, any question of an abuse of discretion would be readily overcome.

Specifically, 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.

Respectfully,

THOMAS J. HERBERT

Attorney General