

2523.

APPROVAL, BONDS OF CITY OF FOSTORIA, SENECA COUNTY, \$15,000.

COLUMBUS, OHIO, May 29, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2524.

SCHOOLS—TUITION—SECTION 7735 GENERAL CODE CONSTRUED

SYLLABUS:

When under the provisions of section 7735, General Code, elementary pupils attend a nearer school than that to which they are assigned, the distance should be measured over the public highway and not over private property; and the district receiving such pupils is entitled to collect for their tuition from the district of their residence, such collection, however, being subject to the notice provided in said section.

COLUMBUS, OHIO, June 1, 1925.

HON. VERNER E. METCALF, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, in which you submit for my opinion the following question and statement of facts:

“Barlow rural school district assigned pupils to a rural school which school is two and one-half miles from the residence of these pupils measured around the public highway or road. The board of education secured verbal permits from various land owners, authorizing these pupils to travel across their farms in order to attend this school and the distance from their home to the school across the fields was 1.52 miles. The parents of these pupils refused to allow their children to attend this school by going across the fields, insisting that the same was not a public highway and that they could not be compelled to go the route established or attempted to be established by the board of education. These pupils were sent by their parents to a special school district and this special school district is now attempting to collect from the Barlow rural school district approximately \$154.00 tuition. This covers approximately three years tuition.”

Your statement also seems to indicate that the school attended is slightly less distant from the pupils in question than the school to which they were assigned. Your question, in effect, is as follows:

Can the board of education of the special school district collect tuition from the Barlow rural school district, under the statement of facts above set forth?

Your question is largely determined by the provisions of section 7735, General Code, which provides as follows:

“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.”

In the case you present, it is assumed that the pupils in question are in the elementary grades, or grades below the high school, and in that respect clearly within the provisions of section 7735, General Code, supra. Notwithstanding the attempted arrangement of the board of education to lessen the distance by procuring permits from private land owners and sending these pupils across such private property, according to your statement the distance would still be slightly over the one and one-half miles maximum distance provided in section 7735, General Code. Furthermore, it is not believed such an arrangement for travel over private property would be valid. See *Board of Education vs. Board of Education*, 11 N. P. (N. S.) 286, (affirmed without report, 88 Ohio St. 549), the syllabus of which is as follows:

“In determining the distance pupils of a public school must travel in going from their home to the school house, the measurement should begin at the exit from the curtilage and run thence along the most direct established route by lane or path to the nearest highway and then follow the center line of the highway to the door of the school house.”

In this connection, attention is also directed to the discussion in the opinion in the above case, by Woodmansee, J., as follows:

“It would not be proper to measure the distance on a straight line, ‘as the crow flies,’ across the fields, as the children, without the consent of the owners of the fields, would thereby become trespassers. Besides, under the provisions of the statutes of Ohio, children who reside in school districts in the country, living more than one-half mile from the school, and residing at not a greater distance than one-half mile from a public highway, are entitled to be carried to school in a public conveyance, at the expense of the school fund in the district. Necessarily, they would be carried thus along the highway. And, whether the children go by public or private conveyance, or whether they walk to and from school, they are expected to go by the most direct and convenient highway, and the length of that course determines the distance from home to school.”

See also the case of *Board of Education vs. Board of Education*, 58 Ohio St. 390, wherein section 4022-a, revised statutes (now section 7735, General Code) was considered, and where, on page 394 of said decision, the following language was used:

"Counsel for the plaintiff in error contend that the distance from residence to school is to be taken 'as the crow flies.' The court below properly rejected this aerial view of the subject. The legislation provides for the convenience of children in attending school and the distance is to be taken as they travel on the most direct public highway from the school house to the nearest portion of the curtilage of their residence."

See also a former opinion of this department, opinions of the attorney general for 1919, Vol. II, p. 1439, the syllabus of which is as follows:

"Distance from the residence of pupils to the school house to which they are assigned must be measured over the nearest traveled public highway, that is, the highway that is at all times practicable, convenient and accessible to such pupils, and one that can be used by vehicles of travel."

See also, opinions of the attorney general for 1921, Vol. II, p. 31, the second and third paragraphs of the syllabus of which are as follows:

"A school district receiving elementary pupils from another district because such pupils are attending their nearest school and are located more than one and one-half miles from the school to which assigned, can collect the tuition for such pupils from the district in which they reside (7735 G. C.).

"The 'notice' required by section 7735 G. C. is a notice from the board of education in (the district) which the pupils are attending to the board of education of the district in which they reside that a claim will be made for tuition, the purpose of such notice being to give the debtor board opportunity to settle the claim before the expense of suit is incurred."

Assuming that the school attended by the pupils in question in the special school district is nearer than the school to which they were assigned in the Barlow rural school district, the distance in both cases being measured over the public highway, and also subject to the provisions of section 7735 of the General Code, with reference to notice to the board of education of the district where the pupils reside, I am of the opinion that the board of education of the special school district is entitled to collect tuition from the Barlow rural school district.

Respectfully,

C. C. CRABBE,

Attorney General.

2525.

QUESTIONS CONCERNING CINCINNATI MUNICIPAL COURT ACT,
ANSWERED.

SYLLABUS:

1. Sections 13698, 12270 and 6212-20, General Code, place a time limit for the prosecuting of error proceedings from the municipal court of Cincinnati to the common pleas court of Hamilton county, Ohio.
2. If the defendant fails to prosecute error within the time limit, the court