

of Amended Senate Bill No. 221, *supra*, did not render section 2657, General Code, inoperative, and consequently said section is not repealed by implication.

Summarizing, it is therefore my opinion that:

1. Section 3 of Amended Senate Bill No. 221, 91st General Assembly, 116 O. L. 199, limits the payment of taxes in ten equal installments as provided for by the act, to those charged on the tax list and duplicate made up in the year 1935 and the last half of those charged on the 1934 duplicate, if the same have not been paid prior to the September settlement in 1935, provided the first half of said taxes were paid prior to the February settlement in 1935.

2. The provisions of section 2657, General Code, relative to the extension of time for payment of taxes, are not repealed by implication by Amended Senate Bill No. 221 of the 91st General Assembly, 116 O. L. 199.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4947.

SCHOOL BUS—MOTORISTS REQUIRED TO STOP FOR
SCHOOL BUS WHEN—"NEAREST ADJACENT SIDE OF
SUCH ROAD" CONSTRUED.

SYLLABUS:

1. *Sections 12604, 12604-1, 12604-2 and 12604-3, General Code, are penal statutes, and as such, are subject to that rule of strict construction which is applicable in the construction of all such statutes.*

2. *The clause "nearest adjacent side of such road or highway" as contained in Section 12604-1, General Code, refers to the side of the road or highway which is to the right when facing in the direction the school bus in question had been traveling prior to being stopped for the purpose of loading or discharging passengers, or the direction it is headed at the time.*

COLUMBUS, OHIO, November 29, 1935.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion respecting the proper construction of the clause: "Such children having entered said bus or having alighted and reached the nearest adjacent side of said road or

highway", as the same is found in Section 12604-1, General Code. The specific question submitted by you is:

"What is the nearest adjacent side of such road?"

Said Section 12604-1, General Code, reads as follows:

"The driver of a vehicle, when approaching the front or rear of a school bus that has come to a stop on a road or highway, outside the limits of a municipal corporation, while in the act of receiving or discharging school children, shall stop such vehicle not less than ten feet from such school bus and keep said vehicle stationary until such children have entered said bus or have alighted and reached the nearest adjacent side of such road or highway."

The terms "vehicle" and "school bus", as used in said Section 12604-1, General Code, are defined in Section 12604, General Code, which statute was enacted at the same time and as a part of the same act by which said Section 12604-1 was enacted. Said Section 12604 reads as follows:

"The term 'vehicle', as used in this act shall be construed to have the same meaning as is given such term in G. C. §6290.

The term 'school bus' when used in this act, shall mean any vehicle being used to convey children to and from school and which is marked in both front and rear with the words, 'school bus,' in plain lettering, readable in daylight at a distance of at least two hundred feet from such vehicle."

Section 6290, General Code, referred to in the above section, defines vehicle as follows:

"'Vehicle' means everything on wheels or runners, except vehicles operated exclusively on rails or tracks, and vehicles belonging to any police department, municipal fire department, volunteer fire department or salvage company organized under the laws of Ohio or used by such department or company in the discharge of its functions."

As a part of the same act of the Legislature in which Sections 12604, 12604-1 and 12604-2, General Code, hereinafter referred to, were enacted, a penalty was provided by Section 12604-3, General Code, for anyone being the driver of a vehicle or school bus who should fail to carry out the provisions of the act.

It will be observed from the terms of Section 12604 that a "school bus" is none the less a "vehicle" and, of course, whether it be on wheels or runners, is motor driven or horse drawn, it is subject to what are commonly called "the rules of the road" or "rules of traffic" as contained in Sections 6310-15 et seq. of the General Code of Ohio.

Section 6310-17, General Code, provides that vehicles shall keep to the right side of the road or highway except when necessary to turn to the left in crossing the road or highway, or in overtaking or passing another vehicle. Section 6310-26, General Code, provides that no vehicle shall stop on a road or highway facing in a direction other than the direction of travel on that side of the road or highway, and Section 6310-27, General Code, provides that no vehicle shall stop on any road or highway except with front and rear right wheels within one foot of the right side of the improved portion of the road except when it is necessary to do so because of other lawful regulations, or in case of an emergency.

Moreover, the duty of a school bus driver to stop his bus when loading or discharging passengers on the right side of the highway is positively fixed by the provisions of Section 12604-2, General Code, which reads as follows:

"The driver of a school bus shall load and discharge the passengers of such bus at the extreme right side of the paved or improved portion of the road or highway, and at the right curbing when such curbing is maintained on such road or highway."

The word "adjacent" is defined by *Webster* and other lexicographers to mean, "to lie near to, close or contiguous, neighboring, bordering on." *Bouvier* defines the term as, "next to or near; neighboring." It is sometimes said to be synonymous with "adjoining", "near", "contiguous." In some decisions, and in fact most of them where the word as found in a statute has been construed, it has been held to mean, "in the neighborhood of or the vicinity of" but not necessarily touching or contiguous to, the precise meaning in each case depending on the context and other considerations.

People vs. Keechler, 194 Ill. 235;

Hanover vs. Fire Insurance Company, 52 Nebr. 749;

U. S. vs. R. R. Co., 31 Fed. 886;

Wormley vs. Wright, 108 Iowa, 232;

Brotherhood Imp. Co. vs. Coal River Mining Co. et al, 46 Fed. 979.

In the case of *Henifen vs. Armitage*, 117 Fed. 845, 851, the court stated that "the word 'adjacent' even in its strictest sense, means no more than lying near, close or contiguous, but not actually touching. There are degrees of nearness, and when you want to express the idea that a thing is immediately adjacent you have to say so." See also *Dixon vs. Van Swearingen Company*;

121 O. S. 56, 68, where a like construction was placed upon the word "adjacent" as used in reservations in a deed.

In some classes of cases such for instance, as where a statute authorizes a change of venue to an "adjacent" county or authorizes the consolidation of "adjacent" subdivisions the word has generally been held to mean adjoining.

Miller vs. Cahill, 81 Ky. 178, 184;

In re Sater, 142 Pa. 511, 517; 21 Atl. 978;

Baxter vs. York Realty Co., 112 N. Y. Supp. 455, 456.

While either or both sides of a road or highway might, in view of established usage of the word "adjacent" when used in a statute, be considered as being adjacent to a vehicle traveling on the highway, there can be but one "nearest adjacent" side of the highway, and that adjacent side which is nearest to a school bus which has stopped for the purpose of receiving or discharging passengers is clearly that side of the highway to the right when facing in the direction the school bus had been traveling or had stopped. The fact that the legislature in enacting the statute here under consideration saw fit to modify the word "adjacent" by the word "nearest" clearly and definitely points to a legislative intent that the side nearest to the bus when it has stopped, which, of course, must be the side of the highway which is next to or nearest to the "extreme right side of the paved or improved portion of the road or highway and at the right curb, when such curb is maintained on such road or highway," as this is the side of the highway on which the driver of a school bus is directed to stop his bus when loading or discharging passengers. (Section 12604-2, *supra*).

I am familiar with the contention that has been advanced by some, that inasmuch as passengers in a school bus when alighting therefrom are necessarily on the right side of the highway as soon as they alight from the bus, and therefore can be in no danger from passing traffic unless they attempt to cross to the opposite side of the highway, that therefore the purpose of requiring passing vehicles to come to a stop when approaching a school bus that is loading or discharging passengers was to enable the passengers to cross to the opposite side of the highway in safety after alighting from the bus and that the requirement serves no purpose unless it does mean that.

A complete answer to this contention is that if the legislature intended to provide that passing vehicles must stop when approaching from either direction, a school bus that is loading or discharging passengers and remain standing until the passengers reach the left side of the highway, it failed to express that intention in the language employed in the statute. The words "nearest adjacent side of the highway" as used in Section 12604-1, are susceptible of but one construction and that is they mean the right side of the highway or the side of the highway to the right when facing in the direction that the bus is headed. In fact this language is so clear as to not admit of construction. It speaks for itself.

The province of construction of a statute is to ascertain and give effect to the intention of the legislature but this intention must be derived from the legislation and not be invented by one construing the statute. To supply the intention and then give effect to the statute according to the intention thus supplied would be legislation instead of construction. *State ex rel vs. Roney*, 82 O. S. 376. The office of interpretation of statutes is to ascertain the intention in using such language. The question at all times is what did the legislature mean by what it said, and not what did it mean to say.

Shea vs. State, 83 O. S. 146;

Slingluff vs. Weaver, 66 O. S., 621.

It is a rule of familiar application by the courts that when the words of a statute are plain, explicit and unequivocal a court is not warranted in departing from their obvious meaning. It is the duty of courts to enforce such statutes as they find them. The task of interpretation does not arise in such cases. The statute construes itself.

State vs. Industrial Commission, 92 O. S., 432, 433;

Ry. vs. Naylor, 73 O. S., 115;

Wehrle vs. Wehrle, 39 O. S., 365;

France vs. Nichols, 22 O. C. C., 539;

City of Columbus vs. Bd. of Elections, 13 O. N. P., 452;

Lewis' Sutherland State. Const., 2nd Ed., Sec. 366.

Moreover, the statutes here involved are penal statutes and are subject in their interpretation to the well known rule that such statutes are to be strictly construed. It is well settled that a statute defining a crime as does the statute here under consideration, cannot be extended by construction to persons or things not within its descriptive terms even though they should appear to be within the reason and spirit of the statute.

Rogers vs. State, 87 O. S. 308;

Malta vs. State, 21 O. C. C. (N. S.) 297.

It is not unreasonable to say that the legislature well knowing the tendency of passengers in vehicles and especially children, when alighting therefrom, to circle around either end of the vehicle and cross to the opposite side of the street sometimes hurriedly, without first going clear to the side of the street upon which the vehicle from which they alighted is parked, enacted this statute to provide for their safety when so doing. It is of course true that passengers would be in little if any danger from passing traffic if they would, upon alighting from a vehicle in which they had been riding, go immediately to the side of the street upon which the vehicle is parked, and wait. Experience has shown, however, that they do not always do this. It is again well known that children may, even after going to the side of the street next to the car from which they alight, suddenly dash across the street and be caught by passing traffic. If, however, that traffic had come to rest previous to their alighting from the vehicle in which they had been riding,

they would be in little danger from vehicles that had so stopped and were in the act of starting up, and it is very probable that the legislature out of an abundance of caution had this fact in mind. At least, the drivers of passing vehicles, if they stop and remain standing as the statute provides, have a better opportunity to observe a child who attempts to cross the highway after it alights from a bus, whether it reaches the side of the road on which the bus is standing or not, and may thus more easily avoid striking the child than if he had not stopped. The requirement to stop and remain standing, as contained in these statutes, is a salutary, and I believe a very wise precaution in providing for the safety of passengers in school busses.

I am convinced, however, that the driver of a vehicle on a road or highway who, upon approaching a school bus from the front or rear, which is loading or discharging passengers, stops and keeps his vehicle stationary until the passengers in the bus have alighted and have reached the side of the highway which is to the right when facing in the direction the bus had been traveling, and proceeds on his way before those passengers have crossed the highway, if they should attempt to do so, could not be convicted of a violation of Section 12604-3, General Code. If, in so doing, he should strike any of the passengers crossing to the opposite side of the street, it is possible he might be guilty of violating some other provision of law, dependent upon the circumstances.

I am therefore of the opinion in specific answer to your question, that the words "nearest adjacent side of said road or highway", as used in Section 12604-1, mean the side to the right of a school bus when facing in the direction the school bus is headed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4948.

APPROVAL, PROPOSED AGREEMENT IN CONNECTION
WITH THE RE-CONSTRUCTION OF SUBWAY IN MIAMI
COUNTY, OHIO.

COLUMBUS, OHIO, November 29, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a proposed agreement by and between the Department of Highways and The Baltimore and Ohio Railroad Company with reference to a driveway in connection with