5998

APPROVAL—PROPOSED AGREEMENT COVERING PROTECTION OF CERTAIN GRADE CROSSINGS IN CHAMPAIGN, CLARK AND PUTNAM COUNTIES—D. T. AND I. R. R. CO.

COLUMBUS, OHIO, August 25, 1936.

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

DEAR SIR: You have submitted proposed agreement by and between you, as Director of Highways, and The Detroit, Toledo and Ironton Railroad Company, covering the protection of certain grade crossings as follows:

(a) Champaign County, S. H. No. 190, St. Paris.
(b) Clark County, S. H. No. 6, South Charleston.
(c) Putnam County, S. H. No. 223, Main St., Ottawa.

After examination, it is my opinion that said proposed agreement is in proper legal form and when duly executed will constitute a binding contract. Said agreement is being returned herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5999.

TUITION—PUPIL ATTENDING HIGH SCHOOL OUTSIDE DISTRICT OF RESIDENCE—BOARD OF EDUCATION NOT LIABLE FOR, WHEN—DISTANCE FROM SCHOOL IMMATERIAL—EXCEPTIONS DISCUSSED

SYLLABUS:

When a board of education of a school district, which has joined with another district or other districts in the maintenance of a joint high school in pursuance of Sections 7699 et seq. of the General Code of Ohio, furnishes or offers transportation to the joint high school so maintained for its resident high school pupils, the said board cannot be held for the tuition of any such pupils who attend another high school, regardless of the distance the pupils live from the said high school or the school which they may attend, unless the pupil or pupils are assigned by the Superintendent of Schools to some other school in accordance with law.

COLUMBUS, OHIO, August 26, 1936.

HON. E. L. BOWSHER, *Director of Education, Columbus. Ohio.*

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

> "A question has been raised with out Department relative to the conditions under which a pupil of high school age residing in a school district comprising a part of a joint high school district may attend a high school other than the joint union high school. In order that our Department may be informed properly, we should appreciate your opinion on the following question:
>
> May the board of education in one of the elementary school districts comprising a joint union high school district, be compelled to pay tuition to the board of education in a school district operating a high school for a pupil who resides more than three miles from the joint union high school if transporation is provided to the joint union high school?"

By a "joint high school district" is understood that union of school districts for high school purposes whereby a so-called "joint high school" is maintained in pursuance of Sections 7699 et seq. of the General Code of Ohio. Where the boards of education of two or more adjoining school districts unite such districts for high school purposes, and establish a high school for the accommodation of high school pupils residing in their respective districts, the school so established is under the management of a high school committee consisting of two members of each of the boards which had joined in the creation of the said joint district. (Section 7670, General Code). The funds for the maintenance and support of such a high school are provided by the school districts comprising the joint district in proportion to the total tax valuation of property in the respective districts. (Section 7671, General Code).

A high school so established is necessarily located geographically "within" one of the districts only. Strictly speaking, such a high school cannot be located physically "within" the boundaries of each and all of the districts comprising the high school district. However, the high school established as a result of the union of school districts and in pursuance of Sections 7699 et seq., of the General Code, is clearly the high school "provided" by each of the boards of education of the districts comprising the high school district, for their resident high school pupils and is the high school "maintained" by those boards for the accommodation of their resident high school pupils.

The authority and obligation of boards of education to pay tuition

for the attendance of resident high school pupils in schools other than those maintained by the board is purely statutory. In the statutes relating to the subject, no mention is made of joint high schools, as such. There are, however, certain pertinent statutory provisions which are applicable to the situation and from the terms of which may be deduced the answer to the question submitted by you.

Section 7748, General Code, provides inter alia:

> "A board of education may pay the tuition of all high school pupils residing more than four miles by the most direct route of public travel from the high school *provided* by the board when such pupils attend a nearer high school or *in lieu* of paying tuition the board of education may pay for the *transporation* to the high school *maintained* by the board of the pupils living more than four miles therefrom." (Italics the writer's.)

By applying the maxim expressio unius est exclusio alterius (the expression of one thing is the exclusion of the other), which the Supreme Court of Ohio, in the case of Cincinnati v. Roettinger, 105 O. S., 145, held to be applicable in the construction of statutes, to the provisions of Section 7748, General Code, quoted above, where it is stated that a board of education may pay the tuition of resident high school pupils who live more than four miles from the high school maintained by the board if they attend a nearer high school in cases where transporation is not furnished by the board to the high school maintained by it, the proper construction of this provision is that the authority extended to pay tuition does not apply when transporation is furnished to the school provided by the board.

In Opinions of the Attorney General for 1933, page 48, it is held:

> "A district board of education which maintains a high school is not liable for the tuition of its resident high school pupils who attend school in another district, except those pupils who live more than four miles from the high school maintained by the board in the event that transporation is not furnished for them to that high school and they attend a nearer high school in another district."

In 1929, there was rendered by the then Attorney General an opinion which held:

> "A board of education which maintains a high school is liable for the payment of tuition for all pupils who reside more

than four miles from such school if such pupils attend a nearer high school in another district, unless transportation is furnished for the pupils to the high school maintained by the board."

See Opinions of the Attorney General for 1929, page 1828. See also Board of Education v. Board of Education, 126 O. S., 575; Opinions of the Attorney General for 1930, page 1464 and Opinion No. 5399 rendered under date of April 21, 1936, addressed to the Prosecuting Attorney of Defiance County.

At no place in the statute will be found any authority for a board of education to pay tuition for resident high school pupils in other schools, where the board provides high school facilities in a school maintained by the board and furnishes transportation thereto except in special instances where a pupil is assigned by the superintendent of schools to some other school outside the district by reason of the fact that special subjects which the superintendent feels the pupil should have are not given in the school provided by the board. This exception applies particularly to attendance in vocational schools upon assignment of the Superintendent, where similar work is not offered in the district of the residence of the pupil or is not provided by the board of education of the district of the residence of the pupil. See Section 7748, General Code, and Board of Education v. Board of Education, 44 Ohio Appellate, 335.

Moreover, the conclusion here reached is inevitable upon the consideration of the provisions of Section 7764, General Code, which provides:

"The 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 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 transporation 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. The transportation of high school pupils under this section shall be in accordance with the provisions of 7749-1. The board of education of the district in which the child lives shall have power to furnish such transportation. Provided, however, that when a high school pupil shall attend a high school other than that to which such pupil has been assigned, the transportation and tuition shall be based on the cost of the transportation and tuition

incident to attendance at the school to which they shall have been assigned."

Upon consideration of the last sentence of Section 7764, supra, and assuming that the high school pupils resident in a school district comprised within a joint high school district are assigned to the joint high school therein maintained, and transportation is provided or offered thereto, it clearly follows that inasmuch as the board of education of that district does not pay tuition as such, for those pupils in the joint high school, it would not be required to pay any tuition in any other school the pupils might choose to attend.

I am therefore of the opinion, in specific answer to your question, that when a board of education of a school district, which has joined with another district or other districts in the maintenance of a joint high school in pursuance of Sections 7699 et seq. of the General Code of Ohio, furnishes or offers transportation to the joint high school so maintained for its resident high school pupils, the said board cannot be held for the tuition of any such pupils who attend another high school, regardless of the distance the pupils live from the said high school or the school which they may attend, unless the pupil or pupils are assigned by the Superintendent of Schools to some other school in accordance with law.

Respectfully,

JOHN W. BRICKER,

Attorney General.

6000.

WATER RENTAL—BOARD OF EDUCATION LIABLE FOR, WHEN—WATER FURNISHED BY MUNICIPAL WATER WORKS FOR SCHOOL PURPOSES—VILLAGE OF WILLARD CASE DISCUSSED—STATUTE OF LIMITATIONS AND RES ADJUDICATA AVAILABLE TO SCHOOL BOARDS.

SYLLABUS:

Boards of education in the Ninth Appellate District, and throughout the State of Ohio, are legally liable for the payment of water rentals charged against them by municipalities which own and operate municipal waterworks, for water furnished from said waterworks and consumed by said boards of education for school purposes prior to the decision of the case of Board of Education v. Village of Willard, 130 O. S., 311, by the Supreme Court of Ohio, as well as thereafter, subject to the limitations as to time as provided by the statutes of Ohio, except to the