

1848.

APPROVAL, BONDS OF VILLAGE OF GRANDVIEW HEIGHTS, FRANKLIN COUNTY—\$62,000.00.

COLUMBUS, OHIO, May 10, 1930.

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

1849.

APPROVAL, BONDS OF PLYMOUTH VILLAGE SCHOOL DISTRICT, RICHLAND AND HURON COUNTIES—\$75,000.00.

COLUMBUS, OHIO, May 10, 1930.

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

1850.

SCHOOL BUS DRIVER—EMPLOYED BY PRIVATE PERSON WHO HAS CONTRACTED WITH BOARD OF EDUCATION FOR TRANSPORTATION OF PUPILS—NECESSITY FOR BOND AND CERTIFICATE OF GOOD MORAL CHARACTER—PREMIUM ON BOND PAYABLE BY CONTRACTOR.

SYLLABUS:

1. *The driver of a school wagon or motor van used in the transportation of pupils must give a bond and procure a certificate of good moral character and qualifications for the position, in accordance with Section 7731-3, General Code, whether such driver is employed directly by the board of education or by a contractor with whom the board of education has contracted for the transportation of pupils in the district.*

2. *When the driver of a school wagon or motor van is employed for that purpose directly by the board of education, and in giving a bond in compliance with Section 7731-3 General Code, he gives a bond of a duly licensed surety company, the premium on such bond should be paid by the board of education, from school funds. When, however, such driver is employed by a contractor with whom the board of education has contracted for the transportation of pupils within the district, the board of education is not authorized to pay the premium on a surety bond given by such driver.*

COLUMBUS, OHIO, May 12, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with respect to the bond and certificate of good moral character which is required of the drivers of school busses. The specific questions submitted are as follows:

"1. When such contracts are made, is the driver of the bus, who is an employe of the owner of the bus, required to give the bond prescribed by Section 7731-3 of the General Code, and have the certificate from the county board of education or the superintendent of schools in the case of a city district?

2. If such driver is required to give a bond, and elects to give a surety bond, may the board of education legally pay the premium on the bond from the school funds under the provisions of Section 9573-1 of the General Code?"

The authority vested in boards of education by Section 7731 and cognate sections of the General Code, to provide transportation for pupils attending school, is broad and general in terms. No specific method to be followed by a board of education in providing this transportation is fixed by statute. Some boards of education own their own school wagons or motor vans, and hire the drivers, and if the vehicles be horse drawn vehicles, the use of horses for the purpose is provided for by some kind of contract of hire. In other districts the board owns neither the vehicle nor the means of locomotion, and contracts with someone to furnish the vehicle, the means of locomotion and the driver.

In some districts where a number of vehicles are used a contract is let to some one person to furnish transportation, and that person furnishes the vehicles and employs the necessary drivers. Sometimes these contractors, where their contract is for one vehicle only, drive their own vehicles, and in other cases, especially where it is necessary to use several vehicles to furnish transportation, the contractor employs the driver. Any one of these methods may lawfully be followed by a board of education in providing for the transportation of pupils as the statute leaves this question to the discretion of the board.

The law, however, requires boards of education, in providing for the transportation of pupils, by whatever method it may be done, to safeguard the service by requiring the board to employ competent drivers and have those drivers give bond for faithful performance, when the board employs the drivers itself, or see to it that persons with whom they contract for transportation employ such competent drivers and secure from the drivers a bond conditioned for faithful performance of duty. To that end, the General Assembly enacted Section 7731-3, General Code, which reads as follows:

"When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. Provided, however, that a county board of education may grant such certificate to a boy who is at least sixteen years of age and who is attending high school. Any certificate may be revoked by the authority granting same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the driver's contract shall be thereby terminated and rendered null and void."

It is a familiar principle of law that when a statute is clear and unambiguous there is no necessity or room for construction or interpretation. The above statute is clear and unambiguous in that it requires of the driver of a school wagon or motor van used in the transportation of school pupils, no matter by whom that driver is employed, the giving of a satisfactory and sufficient bond, and the receiving of a cer-

tificate of good moral character and qualification for the position. The statute is not susceptible of any other construction, in my opinion, than that this bond and certificate applies to the driver of the school wagon or motor van, and it makes no difference with respect to such bond and certificate whether the driver is employed directly by the school board or by a contractor who contracts with the board to furnish the transportation which necessitates the furnishing of vehicles and drivers.

With respect to your second question you are directed to the provisions of Section 9573-1, General Code, which read as follows:

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

It will be observed from the terms of the foregoing statute that the premium on surety bonds given by a public officer, deputy or employe is to be paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe.

When a board of education employs drivers to drive school wagons owned by it, such drivers are, without any doubt, employes of the board of education, and if they give a bond in compliance with Section 7731-3, General Code, which bond is that of a duly licensed surety company the premium on the bond should be paid by the board of education. However, if the board contracts for the transportation and the contractor employs the drivers, such drivers are not employes of the board of education and there is no authority for the board to pay the premium on the bond to be given by such drivers. This fact would no doubt be taken into consideration by the contractor and by the board of education when the contract for the transportation was made.

In specific answer to your questions, therefore, I am of the opinion:

First, the driver of a school wagon or motor van used in the transportation of pupils, must give a bond and procure a certificate of good moral character and qualifications for the position, in accordance with Section 7731-3, General Code, whether such driver is employed directly by the board of education or by a contractor with whom the board of education has contracted for the transportation of pupils in the district.

Second, when the driver of a school wagon or motor van is employed for that purpose directly by the board of education, and in giving a bond in compliance with Section 7731-3, General Code, he gives a bond of a duly licensed surety company, the premium on such bond should be paid by the board of education, from school funds. When, however, such driver is employed by a contractor with whom the board of education has contracted for the transportation of pupils within the district, the board of education is not authorized to pay the premium on a surety bond given by such driver.

Respectfully,

GILBERT BETTMAN,
Attorney General.