

OPINION NO. 81-025**Syllabus:**

1. When a local board of education, in its discretion, provides transportation to high school pupils, R.C. 3327.01 permits the board, in lieu of providing such transportation to a particular pupil where the provision of such transportation is impractical or not feasible, to pay the parent, guardian, or other person in charge of such pupil an amount not to exceed the average transportation cost per pupil, based on the costs of transportation throughout the state in the preceding year. A determination that the provision of transportation is

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"impractical" is limited to a situation in which transportation generally available cannot practically be provided to a particular pupil; it does not include the situation where a board of education has abandoned the busing of all high school pupils because of lack of funds.

2. Where a local school district has the discretion to provide transportation, such as in the case of pupils in grades nine through twelve, it is not necessary that a county board deem the provision of transportation by school conveyance as impractical pursuant to R.C. 3327.02 before the school district can make payment under R.C. 3327.01 to parents, guardians or other persons in charge of particular pupils for whom transportation is not available, in lieu of providing such transportation. R.C. 3327.02 applies only where the local school district is required by law to transport the pupils.

To: Wilfrid G. Dues, Preble County Pros. Atty., Eaton, Ohio
By: William J. Brown, Attorney General, April 30, 1981

I have before me your request for an opinion concerning the authority of a local school board to provide payments in lieu of busing high school students. Your letter states in particular that the Twin Valley Local School District, located in Preble County, has witnessed the defeat of a general operating levy three times in the last year. The busing of students in grades nine through twelve was terminated by the local board in October, 1980 in an effort to conserve money. You ask the following questions:

1. May the local school district board now pass a resolution pursuant to R.C. 3327.01, that it is impractical due to financial problems to bus grades nine through twelve and arrange for payment to parents, guardians or other persons in charge of such children?
2. Is it necessary that the county board also deem it impractical pursuant to R.C. 3327.02 before the payment can be made pursuant to R.C. 3327.01?

Since the authority of a local board of education is limited by and derived solely from statute, your first question is basically whether the local board has the authority, in lieu of providing school transportation, to pay the parents or guardians of high school pupils an amount to cover the average cost of transporting such children. See 1980 Op. Att'y Gen. No. 80-012 ("[T]he authority of boards of education is derived solely from statute and limited to powers expressly granted or necessarily implied from those expressly given"). R.C. 3327.01 is mentioned in your first question as the key authorization for the payment to parents or guardians by a board of education for the cost of transportation when the provision of transportation by the board is impractical. Actually, there has been in existence since 1921 a provision that a local school district may deem transportation by school conveyance impracticable and pay the parents or guardians of the pupils an amount in lieu of providing transportation. See 1921 Ohio Laws 238 (H.B. 216, eff. May 17, 1921). This provision has specific application to local school districts. R.C. 3327.02 is the most recent version of this provision, and states, in part:

If the board of education of a local school district deems the transportation, required under any law, of certain children to school by school conveyances impracticable and if it is unable to secure a reasonable offer for the transportation of such children the local board shall so report to the county board. If the county board deems such transportation by school conveyance practicable or the offers reasonable it shall so inform the local board and transportation shall

be provided by such local board. If the county board agrees with the view of the local board it is compliance with section 3327.01 of the Revised Code, by such local board if such board agrees to pay the parent or other person in charge of the child for the transportation of such child to school at a rate determined for the particular case by the local board for each day of actual transportation. (Emphasis added.)

It should be observed that the only authority within R.C. 3327.02 for a board of education to pay a parent or guardian for transporting a pupil, in lieu of the board's furnishing the transportation, is where the transportation is "required under any law." One of my predecessors stated in an opinion:

[I]t is only in cases where a board of education is required under any provision of law to furnish transportation that they are authorized to pay the parent or person in charge of the child for transporting the child, in lieu of the board's furnishing the transportation itself.

1931 Op. Att'y Gen. No. 3013, vol. I, p. 336, 338. As will be discussed later, boards of education, including a board of a local school district, are normally not obligated or required to provide transportation to high school pupils. R.C. 3327.01. It is, thus, my opinion that, unless otherwise required by law to transport high school pupils, the Twin Valley Local School District has no authority pursuant to R.C. 3327.02 to make payments to parents or guardians of high school pupils, in lieu of providing transportation to school.

R.C. 3327.02 is not, however, the only statutory provision authorizing the paying of a parent or guardian for transportation costs. It was in 1967 that a comparable provision for payments to parents or guardians was added to R.C. 3327.01, which applies to city, exempted, and local school districts. See 1967-1968 Ohio Laws 1087 (Am. Sub. H.B. 823, eff. Dec. 14, 1967). R.C. 3327.01 states, in pertinent part:

In all city, exempted village, and local school districts where resident school pupils in grades kindergarten through eight live more than two miles from the school. . . the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.

In all city, exempted village, and local school districts the board may provide transportation for resident school pupils in grades nine through twelve to and from the high school to which they are assigned by the board of education of the district of residence or to and from the non-public high school which they attend for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code.

In determining the necessity for transportation, availability of facilities and distance to the school shall be considered.

. . . .

Where it is impractical to transport a pupil by school conveyance a board of education may, in lieu of providing such transportation, pay a parent, guardian, or other person in charge of such child, an amount per pupil which shall in no event exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in this state during the next preceding year. . . . (Emphasis added.)

I recently summarized in 1980 Op. Att'y Gen. No. 80-012 the mandatory responsibilities imposed on a school district by the first paragraph of R.C. 3327.01. In the first branch of the syllabus of Op. No. 80-012 I stated:

A board of education must provide transportation for children from grades kindergarten through eight who live more than two miles from the nonpublic school which they attend when such school is in compliance with the rules promulgated by the State Board of Education pursuant to R.C. 3301.07(D), unless such transportation is found to be unnecessary or unreasonable or would require more than thirty minutes of direct travel time. (Emphasis added.)

In regard to high school students, however, R.C. 3327.01 states that boards of education may provide transportation for pupils in grades nine through twelve. There is no obligation on a board of education to transport such pupils to high schools. 1953 Op. Att'y Gen. No. 3100, p. 484; 1947 Op. Att'y Gen. No. 1789, p. 203, 204 ("transportation of high school pupils is merely permissive"). The availability of facilities and the distance to the school would determine the necessity, if any, for the provision of transportation to all pupils, including high school students. When a board of education is transporting elementary students as required by R.C. 3327.01, or when, in its discretion, the board is transporting high school students and the transportation of a particular pupil or pupils is impractical, the board may, in lieu of providing such transportation, pay the parent or guardian of the pupil for the cost of transporting that pupil to school.

A school district may be reimbursed by the state for such transportation payments to parents or guardians of pupils if the school district meets the requirements of R.C. 3317.01 for school foundation funding. Moneys may be appropriated for transportation operating costs for each school district in which transportation is necessary. R.C. 3317.024(K). The State Board of Education has been empowered by R.C. 3317.024(K) to establish rules and a formula for the calculation and payment of pupil transportation costs. The rules and formula for calculation of payment amounts are found in 2 Ohio Admin. Code 3301-83-01. The formula for the calculation of the amount of a Type IV payment, which is a reimbursement to the school district for payments to a parent or guardian in lieu of transportation service, is determined by multiplying the number of eligible pupils by the state average cost for the transportation of all pupils the preceding year. Rule 3301-83-01(C)(4). A Type IV payment, however, may be made only for eligible pupils whose transportation by school conveyance is deemed impractical. Rule 3301-83-01(F)(3). The rule requires that the school conveyance must be declared as being impractical by board of education resolution. The language of Rule 3301-83-01 regarding Type IV payments is not inconsistent with the provisions of R.C. 3327.01.

Because "impractical" is not defined by statute or rule, I will follow my earlier interpretation, made in 1972 Op. Att'y Gen. No. 72-043, which stated that "impractical" "covers situations where pupil transportation is inaccessible to certain pupils" (emphasis added). The application to only "certain pupils" is consistent with my understanding that the legislative intent was to make the paragraph of R.C. 3327.01 allowing a board of education to make payments in lieu of providing transportation applicable to situations where there were only a few pupils for whom transportation was not being provided, and in which it was not feasible to provide transportation by school conveyance for those pupils. Note that the legislature employed the singular "pupil" when speaking of the school board's option to pay the parents for transportation, whereas, the plural of "pupil" is utilized in the provisions for the actual transportation of the children by the board. Therefore, the paragraph of R.C. 3327.01 that grants a board of education the option to provide payments in lieu of transportation is applicable, in the instance of high school students, when the board is actually busing most of such students. When it is impractical for the board to provide certain high school students with transportation by school conveyance, then the parents or guardians of those particular students may be reimbursed for providing the transportation themselves. The determination by a board of education that the provision of transportation is "impractical" is not intended to encompass the situation where a board of education has abandoned the busing of all high school pupils because of lack of funds. The legislature chose instead to limit the payments to parents or guardians to situations

when school bus transportation is required or when, in the discretion of the board, transportation is provided to most high school students, but for some reason the school conveyance is inaccessible for certain children.

In answer to your second question, I conclude that, if the provisions of R.C. 3327.01 are appropriately utilized by a local school district to make payments to parents or guardians of pupils in lieu of providing transportation, it is not necessary for the county board to deem the transportation impractical pursuant to R.C. 3327.02. In other words, if a local district has the discretion to provide transportation, such as in the case of pupils in grades nine through twelve, then R.C. 3327.01 is controlling and a determination of impracticability under R.C. 3327.02 is unnecessary.

Accordingly, it is my opinion, and you are advised, that:

1. When a local board of education, in its discretion, provides transportation to high school pupils, R.C. 3327.01 permits the board, in lieu of providing such transportation to a particular pupil where the provision of such transportation is impractical or not feasible, to pay the parent, guardian, or other person in charge of such pupil an amount not to exceed the average transportation cost per pupil, based on the costs of transportation throughout the state in the preceding year. A determination that the provision of transportation is "impractical" is limited to a situation in which transportation generally available cannot practically be provided to a particular pupil; it does not include the situation where a board of education has abandoned the busing of all high school pupils because of lack of funds.
2. Where a local school district has the discretion to provide transportation, such as in the case of pupils in grades nine through twelve, it is not necessary that a county board deem the provision of transportation by school conveyance as impractical pursuant to R.C. 3327.02 before the school district can make payment under R.C. 3327.01 to parents, guardians or other persons in charge of particular pupils for whom transportation is not available, in lieu of providing such transportation. R.C. 3327.02 applies only where the local school district is required by law to transport the pupils.