

64.

APPROVAL, NOTES OF WASHINGTON TOWNSHIP RURAL
SCHOOL DISTRICT, WOOD COUNTY, OHIO—\$2,500.00.

COLUMBUS, OHIO, January 25, 1933.

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

65.

APPROVAL, NOTES OF TOLEDO CITY SCHOOL DISTRICT, LUCAS
COUNTY, OHIO—\$500,000.00.

COLUMBUS, OHIO, January 25, 1933.

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

66.

DISTRICT BOARD OF EDUCATION—LIABILITY OF BOARD FOR
TUITION OF PUPIL ATTENDING HIGH SCHOOL IN A DIS-
TRICT OTHER THAN THAT OF HIS RESIDENCE—DUTY OF
BOARD TO FURNISH TRANSPORTATION DISCUSSED.

SYLLABUS:

1. *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 transportation is not furnished for them to that high school and they attend a nearer high school in another district.*

2. *A district board of education may, but is not required to furnish transportation for resident high school pupils to schools maintained by it, except in rural districts where the schools have been centralized and transportation is furnished to such centralized school for elementary pupils, unless such high school transportation is deemed and declared by the county board of education to be advisable and practicable.*

COLUMBUS, OHIO, January 25, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

"Farmer Township, Defiance County, Ohio, is six miles square having 9 district schools. District No. 5 is located in the center of the Township and it also has in said District a first grade high school.

a. Are pupils in said township compelled to attend this high school if they are near another high school in another county or township?

b. If not, who pays tuition?

c. Who is obliged to transport said pupils if they are over 4 miles from the Farmer Township high school?"

I am advised that Farmer Township Rural School District in Defiance County maintains a high school, that the "District No. 5" spoken of by you is what formerly corresponded to a subdistrict within Farmer Township Rural School District and that the high school located in said School "District No. 5" is the high school maintained by the Farmer Township Rural Board of Education.

Since the enactment of section 7749-1, General Code, a local school district is not required to provide transportation to a high school for its resident high school pupils, unless the transportation is deemed and declared by the county board of education to be advisable and practicable, except in rural school districts where the schools have been centralized and transportation is furnished for elementary pupils to the centralized school.

Said section 7749-1, General Code, reads as follows:

"The board of education of any district, except as provided in section 7749, may provide transportation to a high school within or without the school district, but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

Section 7749, General Code, referred to in the above quoted section, relates to districts in which the schools have been centralized. Said section 7749-1, General Code, was held by the Supreme Court of Ohio to be constitutional in the case of *Minshall vs. State*, 124 O. S. 61.

The same legislature that amended section 7749-1, General Code, to read as it now does, repealed former section 7764-1, General Code, which provided in substance that each board of education should provide work in high school branches in some school within four miles of the residence of each such child for those children of compulsory school age who had finished the ordinary grade school curriculum, except those who lived within four miles of the high school and those for whom transportation to high school was being provided.

While said former section 7764-1, General Code, was in force, it was held by the Supreme Court of Ohio that a board of education was required to furnish high school privileges for all resident high school pupils within the district at some school within four miles of the pupil's residence or furnish transportation to a high school, or board and lodging for the pupil in the vicinity of such a school, and if it failed to do so, it was the duty of the county

board of education to furnish one or the other of these alternatives by force of section 7610-1, General Code. If neither the local board nor the county board provided these school privileges, or transportation, or board and lodging, as stated above, the parent could recover from the local board for the value of the transportation furnished by him for his child, if the parent furnished such transportation. *State, ex rel. Masters, vs. Beamer*, 109 O. S. 133; *Sommers vs. Putnam County Board of Education*, 113 O. S. 177; *Board of Education of Swan Township vs. Cox*, 117 O. S. 406.

At the time of the repeal of former section 7764-1, General Code, and the enactment of section 7749-1, General Code, section 7748, General Code, was left unchanged. This latter section 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 such tuition the board of education may pay for the transportation to the high school maintained by the board of the pupils living more than four miles therefrom."

In view of this state of the law, my predecessor held in an opinion which is reported in the published Opinions of the Attorney General for 1929, at page 1828:

"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."

To the same effect is a later opinion rendered by the same Attorney General, said opinion being No. 4649, rendered under date of September 23, 1932, and addressed to the prosecuting attorney of Carroll County.

There is no provision of law requiring high school pupils who reside in a district which maintains a high school to attend that high school. If they do not attend the high school maintained by the board in the district of their residence however, no means are provided by law whereby they may have their tuition paid by the district of their residence if they attend another high school, except that provision quoted above with reference to the payment of tuition where the pupil resides more than four miles from the school maintained in the district of its residence and transportation is not furnished thereto. If they reside within four miles of the high school maintained in the district of their residence, and they attend some other high school, they will be required to pay their own tuition.

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

a. The pupils in question are not compelled to attend the high school maintained by the board of education of the Farmer Township Rural School District, regardless of whether or not there is a nearer high school in another district.

b. If the pupils reside within four miles of the high school in the Farmer Township Rural School District, and they attend a high school in another district, the Farmer Township Board of Education is not liable for the payment of their tuition. If, however, they reside more than four miles from the high school maintained in the Farmer Township Rural School District, and their transportation is not furnished by the District to said high school and they attend a nearer high school in another district, the Farmer Township Rural Board of Education is liable for the payment of their tuition in the school which they attend. If these pupils reside more than four miles from the high school maintained in the Farmer Township Rural School District and transportation is furnished for them to this high school, and they refuse to take advantage of these transportation facilities and attend a high school in another district, the Farmer Township Rural Board of Education cannot be held for the payment of their tuition in the district where they attend school.

3. No obligation rests upon a board of education to furnish transportation for resident high school pupils to a high school maintained by said board, except in rural school districts in which the schools have been centralized and transportation is furnished for elementary school pupils to said centralized school, unless such high school transportation is deemed and declared by the county board of education to be advisable and practicable.

Respectfully,

JOHN W. BRICKER,

Attorney General.

67.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS STATE FIRE MARSHAL—FRANK G. HENRY.

COLUMBUS, OHIO, January 25, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond to guarantee the faithful performance of the duties of Frank G. Henry, as State Fire Marshal. The bond, given by the Century Indemnity Company of Hartford, Connecticut, is in the penal sum of \$10,000.

After an examination of said bond, I find the same to be in proper legal form. I am therefore endorsing my approval on said bond and returning it to you herewith.

Respectfully,

JOHN W. BRICKER,

Attorney General.