

OPINION NO. 74-040

Syllabus:

Pursuant to R.C. 3327.01 a board of education is required to provide transportation for resident students attending non-public high schools whenever, in similar circumstances, transportation is provided for resident students attending public vocational high schools.

To: Martin W. Essex, Supt. of Public Instruction, Dept. of Education, Columbus, Ohio

By: William J. Brown, Attorney General, May 16, 1974

I have before me your request for my opinion, which reads as follows:

"Section 3327.01 O.R.C. provides that '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 nonpublic 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.'

"Our investigations reveal that certain school districts provide school bus transportation to students in grades 1 through 8 living one mile or more from the school they attend, and transportation to high school for certain students who attend public vocational schools.

"The general instruction we have given to our transportation coordinators with regard to equality of treatment is 'If the school district transports any high school students to and from public high schools, it is obligated to provide the same service for all nonpublic high schools students. For example, if transportation is provided for students attending a public vocational school who live more than one mile from the school, transportation must be provided for pupils enrolled in basic or vocational programs who attend nonpublic high schools who live more than one mile from the school they attend but within the thirty minute time limit of Section 3327.01 O.R.C.

"I respectfully request your opinion regarding this general instruction and a school district's obligation, because of its transportation of some high school students to the public vocational school, to provide transportation for resident students in the district attending regular or basic classes in nonpublic high schools."

R.C. 3327.01, which provides for the transportation of pupils, reads in part as follows:

"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 for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the non-public school which they attend 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.

"A board of education shall not be required to transport elementary or high school pupils to and from a non-public school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation, appointed under section 3327.011 [3327.01.1] of the Revised Code, for the attendance area of the district of residence."
(Emphasis added.)

This Section requires a board of education to provide resident school pupils in grades kindergarten through eight who live more than two miles from the public or non-public school which they attend with transportation to and from such school. Such board may be excused from this requirement only when it can satisfy the state board of education that such transportation is unnecessary or unreasonable.

In contrast, with respect to resident school pupils in grades nine through twelve, a board of education is vested with discretion to determine whether to provide transportation for such pupils to and from the public or non-public high school which they attend. However, in exercising this discretion the board is guided by the third paragraph of R.C. 3327.01, which provides that "in determining the necessity for transportation, availability of facilities and distance to the school shall be considered." Your question is whether, pursuant to R.C. 3327.01, a board of education is required to provide transportation for resident students attending non-public high schools if transportation is provided for resident students attending public vocational high schools.

R.C. 3327.01 does not authorize a board of education to provide transportation for students attending certain schools while excluding those who attend other schools. That Section merely gives the board discretion to provide or not provide such transportation for high school students, and it requires the board to consider the availability of facilities and the distance to the school in making such decision. My predecessor, in Opinion No. 68-156, Opinions of the Attorney General for 1968, discussed R.C. 3327.01 as follows:

"* * * This statute and the regulations and guidelines of the State Board of Education make it clear that each school district must provide the above-mentioned mandatory transportation to students attending non-public schools, and that whatever permissive or optional transportation is provided for students attending public schools must also be provided for students who attend non-public schools. The only exception is that provided by the statutory requirement that the non-public school in question must be within thirty minutes of direct travel time from the collection point."

(Emphasis added.)

My predecessor's conclusion was that the type of school which the students attend is not a proper criterion upon which to base a determination of whether to provide transportation. This view is supported by the fact that the 1967 amendment to R.C. 3327.01 (132 Ohio Laws 1089), which provided for transportation of pupils to non-public schools, also contained the phrase requiring availability of facilities and distance to the school to be considered in determining whether to provide transportation. After the decision to provide transportation has been made, the board must treat equally all students who are similarly situated.

A regulation which distinguishes between students on the basis of a vocational-basic education distinction has such an attenuated connection with a rational plan of school transportation as to be arbitrary. The nature of a vocational education creates no greater demand for transportation than does that of a basic education. The supplies that a vocational student must carry to and from school are not significantly different from those carried by a student enrolled in a basic high school. The only possible difference is that vocational school districts often encompass a greater area than other school districts, thus causing many vocational students to travel farther to school. However, many other schools, particularly non-public schools, have encountered the same problem, so that vocational schools are not unique in that respect. Since there appears to be no rational basis upon which a board of education could decide to provide transportation for vocational high school students only, such a decision must be arbitrary. Based upon the above discussion I must conclude that if a board of education decides in its discretion to provide transportation for students in any public high school, whether vocational or basic, the board must also provide transportation on the same terms for students in other high schools, both public and non-public, in its district.

In specific answer to your question, it is my opinion and you are so advised, that pursuant to R.C. 3327.01 a board of education is required to provide transportation for resident

students attending non-public high schools, whenever, in similar circumstances, transportation is provided for resident students attending public vocational high schools.