

2427.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
LORAIN COUNTY, OHIO.

COLUMBUS, OHIO, October 8, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

2428.

TRANSPORTATION OF PUPILS—DISTANCE FROM SCHOOL—RULE
FOR MEASURING DISTANCE DISCUSSED—SPECIFIC CASE CON-
SIDERED.

SYLLABUS:

Rule relating to the method of measuring the distance a school pupil lives from school, for the purpose of determining whether or not the said pupil is entitled to transportation, discussed.

Specific case considered.

COLUMBUS, OHIO, October 9, 1930.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

"I desire your opinion relative to the following matter. The question in mind has to do with the measurement of distance between the home of a pupil living in a rural district and the school house to which said pupil is assigned for educational instruction. You are probably familiar with the 21 O. N. P. (N. S.) Opinion, which says distance is measured 'from the exit of the curtilage by most direct way to the point where it intersects the highway. At the other end, by the most direct path from the school house door to the middle of the highway.' There is an Attorney General's Opinion, 1119, page 1439, on the same question.

The particular set of facts involved has to do with the following situation:

'A' has three routes of travel from his home to the public highway and the question is which of these routes is the one from which the measurement of the distance should be taken. 'A' has one route from his home to the public highway to where he has his mail box. There is no road that could be traveled by a vehicle or automobile leading from the residence to the public highway where the mail box is located. 'A' has a second route which he travels with a buggy or automobile and which route he has traveled in the past to the public highway in transporting his children to the school in question. 'A' has a third route by which he sometimes goes to mill and to market.

The mail box route is more than two miles from the school house as the same is figured. The horse and buggy route and the automobile route which has been the one traveled in previous years taking the children to school is less than two miles from the school house in question, and the third route

is still nearer the school house than either route number one or two, above described.

The question is, from which of these routes from the residence to the highway should the measurement be started in order to calculate the distance between 'A's' residence and the school house to which the pupil in question has been assigned?"

The proper rule for the measurement of the distance a school pupil lives from the school which he attends, for the purpose of determining whether or not the pupil is entitled to transportation under the law, is set forth in an Opinion of my predecessor, which may be found in the Opinions of the Attorney General for 1927, at page 2489. The syllabus of this opinion reads as follows:

"1. In determining whether or not elementary school pupils live more than two miles from the school to which they are assigned, the distance should be computed in accordance with the rules adopted by the courts, and not as the distance a school bus would travel if the pupils were transported by the board of education.

2. Under the law providing that in all school districts transportation shall be provided for resident elementary school pupils who live more than two miles from the school to which they are assigned, the distance should be computed by beginning at the door of the school house which would be the most accessible to the pupil in traveling from his home 'by the nearest practicable route for travel accessible to such a pupil,' thence by the regularly used path to the center of the highway, thence along the center of the highway which is the nearest practicable route for travel accessible to such pupil to a point opposite the entrance to the curtilage of the residence of the pupil, (or the path or traveled way leading to the entrance of such curtilage as the case may be) thence to the entrance of the curtilage, along the path or traveled way to said entrance if the curtilage of the residence of the pupil does not extend to the highway."

The rule there laid down, and the discussion contained in the opinion, follows the rule with reference thereto laid down by the courts, and especially by the Common Pleas Court of Licking County in the case of *State ex rel. Sterret vs. Board of Education*, 20 O. N. P., N. S. 126. This case is referred to by you in your inquiry. It will be noted that the court holds in this case that when measuring the distance a pupil lives from the nearest schoolhouse that distance is to be computed by including the distance from the exit of the curtilage *by the most direct path or way*, to the point where it intersects the highway.

By the expression "the most direct path or way" is meant the nearest practicable path or way. By applying this rule to the facts of the case stated by you in your letter, there is little difficulty in determining that the pupil in question resides less than two miles from the school referred to.

In this case there are three routes spoken of. Two of these are practicable routes for travel, and by measuring the distance over either one of these two routes, the distance is less than two miles. The third route, referred to as the "mail box route" is farther, and clearly not "the most direct path or way." Anyway, this third route is not practicable for travel by vehicle.

Even if, by measuring the distance over the two practicable routes, that distance were more than two miles, and the distance by the "mail box route" were less than two miles, it is questionable whether or not this "mail box route" might be considered, because of the fact that it is not a practicable route for travel by vehicle. Anyway, that is a question which it is not necessary to decide in this case.

I am of the opinion, in specific answer to your inquiry, that the pupil in question lives less than two miles from the school, in so far as the distance the pupil lives from the school is a factor in determining whether or not he is entitled to transportation.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2429.

APPROVAL, NOTES OF VILLAGE OF POWHATAN POINT, BELMONT COUNTY, OHIO—\$18,803.00.

COLUMBUS, OHIO, October 9, 1930.

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

2430.

APPROVAL, ABSTRACT OF TITLE TO LAND OF G. STARK FRAMBES, IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, October 9, 1930.

The State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an abstract of title, warranty deed and encumbrance record No. 678 relating to a certain parcel of land in the city of Columbus, Franklin County, Ohio, which is owned of record by one G. Stark Frambes, and which is more particularly described as being eight inches off of the north side of Inlot No. 120 in the city of Columbus, Ohio, as said lot is numbered and delineated upon the recorded plat thereof, of record in Deed Book "F", page 332, Recorder's Office, Franklin County, Ohio.

Upon examination of said abstract of title, which is certified by the abstracter under date of July 23, 1930, and supplemented by a continuation thereof, certified by the abstracter under date of October 2, 1930, I find that said G. Stark Frambes has a good and indefeasible fee simple title to the above described property free and clear of all encumbrances except taxes on said property as follows:

The taxes for the year 1929 amounting to \$5.74, together with the penalty thereon, are a lien upon this property, as are the undetermined taxes for the year 1930, the amount of which is not stated in said abstract.

The continuation of said abstract above referred to shows that on August 22, 1930, The Thompson Bond and Mortgage Company filed an action in the Common Pleas Court of Franklin County, Ohio, against one James C. Aleshire and other named defendants, including said G. Stark Frambes, in which action a judgment in and for the sum of \$1,758.18 is prayed for against said G. Stark Frambes and others. It further appears that on September 23, 1930, G. Stark Frambes filed a