

generally. Of these sections it is thought that section 7620 G. C. is the broadest in general terms as to powers conferred upon boards of education, and may be said to be the only particular section applicable or pertinent to your question. The section is as follows:

“The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

It is true this section confers very broad powers upon boards of education, nevertheless it is not believed that the provisions of the same may be said to be broad enough to cover authority to purchase or provide accident insurance as an indemnity against personal accident or injury sustained by pupils of the schools. While it is thought to be the duty generally of a board of education to use all means within its power to safeguard the lives of the pupils being transported by school conveyances, and to provide for their safety in any manner or by any method reasonably employed under the circumstances, yet it is not believed that such an incidental power may be extended to cover the provision of accident insurance, since such a contract is thought to be a matter entirely foreign to school purposes and one over which a board of education has no authority or control.

In case No. 16539, decided by the Supreme Court November 22, 1921, it was held that boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

Upon such consideration, therefore, you are advised that in the opinion of this department boards of education are unauthorized by law to provide accident insurance covering indemnity against personal accident or injury to the pupils of the schools under their jurisdiction.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2817.

SCHOOLS—TUITION—THE PHRASE “ACTUAL RESIDENTS OF THE DISTRICT” IN SECTION 7681 G. C. DEFINED—REQUIRE ACTUAL RESIDENCE IN FACT OR PHYSICAL PRESENCE AND DWELLING OF PARENT OR PERSON STANDING IN *LOCO PARENTIS* TO PUPIL—SCHOOL AND VOTING RESIDENCE ARE NOT IDENTICAL.

1. *The phrase “actual residents of the district” occurring within the provisions of section 7681 G. C. requires an actual residence in fact, or the physical presence*

and dwelling of the parent or person standing in loco parentis to the pupil, for the time being at least, within the school district.

2. The school residence required by section 7681 G. C. and the voting residence required by section 4866 G. C. are not identical.

COLUMBUS, OHIO, January 24, 1922.

HON. N. E. KIDD, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date reading as follows:

“We have a question arising between two township school districts of this county, which in itself is not a very important matter, but over which there seems to be some feeling and raising a pretty nice question. The situation is this: A parent owns property in each of the two districts. He holds his voting residence in one of the districts, while he is now as he says temporarily living and sending his child to school in the other district.

Query: Can the district in which this man is now living and sending his child to school collect tuition from the district in which he holds his voting residence? Is a man’s school residence necessarily where he holds his voting residence?”

It is believed that answer to the questions contained in your inquiry depends upon the construction and interpretation given the phrase “*actual residents of the district*” as it occurs in section 7681. The section is partially quoted herewith:

“The schools of each district shall be free to all youth between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district, but the time in the school year at which beginners may enter upon the first year’s work of the elementary schools shall be subject to the rules and regulations of the local boards of education.”

The Century Dictionary defines the word “actual” as follows:

“Actual:

1. Active; practical.
2. In full existence; real; denoting that which not merely can be, but is; opposed to potential, apparent, constructive, and imaginary.
3. Now existing; present; opposed to past and future, as in the ‘actual condition of affairs.’”

The Standard Dictionary defines the word “actual” as follows:

“Existing in fact, as opposed to merely possible, constructive, conceivable or ideal; real as distinguished from conjectural, or imputed by construction; as, ‘actual possession.’”

Bouvier’s Law Dictionary defines “actual” as, “real in opposition to constructive, or speculative, something existing in fact,” *State vs. Wells*, 31 Conn., 213; real as opposed to nominal, *Astor vs. Merritt*, 111 U. S. 202. In *State ex rel. Kuhn*, 8 O. N. P. 197, it is stated that the term “residents” is generally that used to express the connection between persons and places, its exact significance being left to

the construction determined from the context and the apparent object to be accomplished by the enactment.

From a consideration of the definitions of the word "actual" as quoted, it is believed that the use of the same as occurring in section 7681 G. C. is intended to require an actual or real residence of the parent or person standing in *loco parentis* to the pupil within the school district, and that such a residence requires the physical presence and dwelling of such a person for the time being at least, within said school district.

It is apparent from such a construction, that your first question may be answered by the general statement that if the parent in question has established a residence in a given school district, and is actually dwelling there for at least the time being, his child is eligible to the free tuition provided by section 7681 G. C. It is obvious, also, that such an answer renders unnecessary a consideration of the question of the liability of any board of education for the tuition in question.

Proceeding to your second question, to wit: "Is a man's school residence necessarily where he holds his voting residence?" It is thought that the same question may be transposed without alteration of meaning as follows: Does a person's voting residence connote his school residence? That is to say, does residence for election or suffrage purposes determine the residence for school or educational purposes?

Paragraph 1 of section 4866 G. C. defines generally the requirements of "residence" of the voter or elector, and it is chiefly noted that the most essential element of such residence is *the intention of the voter*; that is to say, his *intention primarily* may be said to fix the place of his permanent residence or habitation.

In similar vein paragraph 8 defines the acquisition of a new residence, based upon the fact of removal, and holding that it shall avail nothing without the intention. Thus it may be said that the "residence" of one seeking to exercise the privileges of suffrage is a fixed or permanent residence or habitation, a domicile or legal residence limited and controlled chiefly by the intention of the elector to fix and determine the particular place or locality, as his permanent residence or abode, and to which, whenever absent, he has the intention of returning.

It is not believed that the phrase "actual residents of the district" occurring in section 7681 G. C. contemplates such a residence, in degree at least as to permanency of domicile, since it is thought that the intention of the statute is to afford free tuition to those pupils or children whose parents are actually dwelling for the time being at least, within the school district. Hence, it may be said that section 4866 G. C. and section 7681 G. C. do not require a similar residence, in the sense that both must be said to be the permanent or fixed domicile of the parent or voter. Upon such considerations, it follows that a negative answer should be given to your second question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2818.

APPROVAL, BONDS OF VILLAGE OF MALVERN IN AMOUNT OF \$3,500
FOR IMPROVEMENT OF WATER WORKS.

COLUMBUS, OHIO, January 25, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio