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TRANSPORTATION OF PUPILS—COST PAID FROM FUNDS OF JOINT HIGH SCHOOL NOT DISTRICTS WHEREIN PUPILS RESIDE—PROCEEDS 2.65 MILLS TAX LEVY MAY NOT BE USED FOR SUCH PURPOSE.

SYLLABUS:

1. *The cost of transporting pupils to a joint high school organized and maintained under and by authority of Sections 7669, General Code, et seq., should be paid from the funds of the joint high school and not from the funds of the districts in which the pupils reside.*

2. *There is no provision of law whereby any portion of the proceeds of the 2.65 mills tax levy may be distributed to any school district or to a joint high school committee on account of the transportation of pupils to a joint high school.*

COLUMBUS, OHIO, May 11, 1934.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“A county superintendent of schools has asked me regarding the following situation, and I am referring it to you for opinion:

The West Jefferson Joint High School, composed of Jefferson Township and Jefferson Village District, not exempted, is faced with a transportation problem. The township in question has three consolidated schools—Building A, Building B, and Gillivan, and furnishes transportation to the elementary students in the same buses in which the high school students are transported.

The Village School District has no transportation of its own. Also, the Village School District has never participated in the distribution of the 2.65 mills levy.

There appear to be two questions involved: (1) Is the said Jefferson Village Board of Education responsible for any part of the transportation of those pupils living in Jefferson Township?

(2) Does transportation cost figure in the per-pupil cost?”

I find that a former Attorney General, in an opinion which is reported in the Opinions of the Attorney General for 1922, page 399, held:

“Where a pupil attending a joint high school resides more than four miles from such joint high school, the transportation of the pupil to the joint high school should be provided by the board of education of the district in which the child lives.

* * *

Under existing law there is no authority for boards of education in charge of districts constituting a joint high school district to provide for the joint expense of transportation costs to such high school,

nor is there authority for the high school committee in charge of the management of such high school to provide transportation of high school pupils to such high school."

So far as the statutes are concerned, the law has not been materially changed since the rendition of the opinion above referred to.

In 1925, the Common Pleas Court of Williams County, in the case of *Board of Education vs. Board of Education*, 26 O. N. P., (N. S.) 33, held:

"The cost of transporting pupils to a union high school organized under Sections 7669, G.C., et seq., from one of the township rural school districts making up the joint high school district should be paid out of the funds raised in the union high school district to maintain the high school, and should not be paid out of the funds raised for the rural schools in the township rural school district."

While the court decision above referred to, is that of a common pleas court and is not *stare decisis* outside the jurisdiction of that court, it is the only decision of a court on this question and should be given greater weight than an opinion of the Attorney General.

The case was not carried higher and seems to have been accepted by the attorneys in the case, and I am informed it has been followed since its rendition by the administrative authorities in charge of joint high schools. I am therefore constrained to hold that this decision should prevail over the previous holding of the Attorney General.

This cost of transportation would, of course, be considered in computing the per-pupil cost in the joint high school.

Neither one of the districts comprising the joint high school district would receive credit for the transportation of the high school pupils to a joint high school, in the distribution of the proceeds of the 2.65 mills levy as provided by Section 7600, General Code. As there is no provision for the distribution of any part of the proceeds of the 2.65 mills levy to joint high schools or to joint high school committees, incident to the transportation of pupils, no part of the proceeds of this levy can be distributed to any district or any agency on account of the transportation of such pupils.

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

(1) The Jefferson Village Board of Education is responsible for the transportation of high school pupils living in Jefferson Township who are transported to the joint high school in question, to the extent that the Jefferson Village Board of Education contributes its share of the cost of maintaining the joint high school.

(2) The cost of transportation of pupils to a joint high school established and maintained in pursuance of Sections 7669, General Code, et seq., is a part of the cost of maintaining such joint high school and should therefore be considered in computing the per-pupil cost in said joint high school.

Respectfully,

JOHN W. BRICKER,

Attorney General