

"Quaere: Whether, by virtue of the provisions of Section 2319, General Code, the superintendent of the department of public works has authority to enter into a contract with the lowest bidder or any bidder after the expiration of thirty days from the time of opening proposals."

While the court did not pass upon the validity of a contract which is awarded after thirty days from the time of opening the proposals, nevertheless it appears to me that the opinion expresses such doubt on the matter as to cause me to disapprove this contract. I am therefore disapproving this contract on the sole ground that you, as director of public works, did not have jurisdiction to award this contract in this case, under the terms of section 2319, General Code, and am returning all papers submitted in connection with the contracts.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3663.

SCHOOL BUS—COUNTY BOARD OF EDUCATION MAY LICENSE DRIVER WHO HAS NO CONTRACT TO DRIVE—DIRECTOR OF EDUCATION MAY REQUIRE SELECTION OF LOWEST BIDDER AS CONDITION PRECEDENT TO PARTICIPATION IN STATE EDUCATION EQUALIZATION FUND.

SYLLABUS:

1. *The county board of education may lawfully grant a certificate such as is mentioned in Section 7731-3, General Code, to any proper person applying for the same, whether or not such person has at that time a contract to drive a school wagon or motor van within the county.*

2. *By force of Section 7596, General Code, the Director of Education has the power to require a local school board to advertise for bids for drivers for their school wagons or motor vans used in the transportation of school children and to employ the one whose bid is lowest, as a condition precedent to participation in the state educational equalization fund.*

COLUMBUS, OHIO, October 17, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

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

"The York Township Board of Education at a regular meeting employed C. L. for driver at higher salary than bids offered by other competitors. The question whether the local board (York Township Board of Education) could accept the L. bid, to the exclusion of other bids was taken to the State Department of Education. This department suggested that action be brought against York Township Board of Education to prevent its paying the higher bid of L. and furthermore stated that the State Department would not pay L. salary in excess of his nearest competitor.

L. presented a driver to the County Board of Education for licenses granted by this Board to all drivers of motor busses or horse drawn vehicles for transportation in Athens County and who prove that they are satisfactory drivers.

Will it be legal for the Athens County Board of Education to grant a driver's license to L.'s substitute, subject to the approval of the State department of Education, or if the case is to be taken into court?"

Section 7731-3, General Code, provides in substance, that no one may be employed as a driver of a school wagon or motor van for the transportation of school children unless he receives a certificate from the county board of education, or the superintendent of schools in a city school district, to the effect that he is at least eighteen years of age, and is of good moral character and qualified for the position. Such a certificate may lawfully be issued to a person applying for the same whether he actually has been employed or not. In most cases, perhaps, these certificates are not issued until after the applicant has the promise of a position. He then secures the certificate so that he may legally perform the services. There is no reason, however, why the board can not issue a certificate to a person who has not yet secured a position but is merely attempting to get one.

It is not necessary that a school board secure bids before employing bus drivers. The only provision of law which requires a board of education to secure bids before making contracts is that contained in Section 7623, General Code. Upon examination of this section, you will find that it makes no provision for the securing of bids or the letting of contracts for school bus drivers to the lowest bidder.

The Director of Education, however, may require a school board to secure bids for this purpose before employing a driver, or refuse to extend state aid to the district. It is only in districts which wish to secure state aid, however, that the Director of Education would have authority for such a requirement. His authority in this respect is regulated by Section 7596, General Code, which provides in substance, that the Director of Education is empowered to order any local board of education to exercise any power of whatsoever character vested in it by law, and such order shall be complied with as a condition precedent to any participation in the state education equalization fund.

In the case you mention, the Director of Education would have the power to withhold state aid from the district in question unless it complied with his order to employ a person as a driver to transport the children, who had offered to do it at the lowest price.

This, however, does not prevent the county board of education from issuing a certificate of the kind mentioned in Section 7731-3, General Code, to the person in question. The issuing of the certificate, if issued, has nothing whatever to do with his obtaining the position.

It is my opinion, in specific answer to your question, that it is perfectly legal for the Athens County Board of Education to grant a certificate of the kind mentioned in Section 7731-3, General Code, to the person in question, even though the York Township Board of Education does not employ him as a driver for the transportation of the school children of the district.

Respectfully,
GILBERT BETTMAN,
Attorney General.