The rule as laid down by the Supreme Court in the above case has been followed at all times.

I also find in the case of *Board of Trustees of Ohio State University* vs. *Satterfield*, 2 O. C. C., 86, at p. 94, the following language:

> "The statute of limitations does not run against the United States, or the state."

The same rule is found in 25 Cyc., p. 1006, as follows:

> "In the absence of express statutory provision to the contrary, statutes of limitation do not as general rule run against the sovereign or government, whether state or federal."

It is therefore my opinion that:

1. Section 11221, General Code, which provides for limitation of actions against carriers, does not apply to any cause of action accruing before the effective date thereof, to-wit, July 15, 1925.

2. Said section does not apply to claims of the state of Ohio against a carrier for recovery of overcharges for transportation of persons or property in Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1364.

SCHOOLS—TRANSPORTATION OF PUPILS—RULES FOR COMPUTING DISTANCE DISCUSSED.

SYLLABUS:

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 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 to 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.*

COLUMBUS, OHIO, December 14, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"I wish to submit the following statement of facts for your cons.deration and request your opinion on the question presented:

Certain elementary school pupils have been assigned to a school which is a few feet less than two miles from their residence measured from the exit from the curtilage or yard to the east door of the school house. Measured over the same route to the south door of the school house, which is the nearest one at which the village council permits school vehicles to unload, the distance is slightly over two miles.

The board of education refuses to furnish transportation, claiming that the distance from the residence to the nearest door of the school house is less than two miles. The parents of the children contend that the actual distance the children are required to travel to the south door of the school house is more than two miles and transportation should be furnished.

If the children would walk the distance would be less than two miles, but if transported the distance to the nearest point they can unload to enter the school house is more than two miles. Does the law contemplate they should walk or is it the intent of the law that the distance they are transported, is to govern in measuring the distance?

Your opinion will be very much appreciated."

Section 7731, General Code, reads as follows:

"In all city, exempted village, rural and village school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education shall provide transportation for such pupils to and from school except when in the judgment of such board of education, confirmed, in the case of a school district of the county school district, by the judgment of the county board of education, or, in the case of a city or exempted village school district, by the judgment of the probate judge, such transportation is unnecessary.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board of education not later than ten days after the beginning of the school term and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half miles of said residence or the private entrance thereto is unnecessary and impracticable. When local boards of education neglect or refuse to provide transportation for pupils the county board of education may provide such transportation and the cost thereof shall be paid as provided in Section 7610-1, General Code."

At no place in the above statute is any definite rule laid down fixing the exact points at either end of the route from which or to which measurement of the distance is to be made, when determining whether or not the duty devolves on a board of education to transport pupils. The statute merely provides that transportation shall be furnished when the pupils *"live* more than two miles from the *school."*

A similar statute relating to the rights of pupils attending school is Section 7735, General Code, which reads in part as follows:

"When pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another school district, in all grades below the high school. * * * "

This statute which was in force in 1898, and was then known as Section 4022a, Revised Statutes, (92 O. L. 132) contained the same provision with reference to distance as is contained in the statute at the present time. At that time the Supreme Court, in the case of *Board of Education* vs. *Board of Education,* 58 O. S. 390, had occasion to construe the provisions of said statute with respect to distance, as follows:

> "The distance of its residence from the school of its district, which under Section 4022a, Revised Statutes, entitles a child of school age to attend the school of another district, is one and a half miles by the most direct public highway from the school to the nearest part of the curtilage of its residence."

It was contended, in the above case, that distances should be measured "as the crow flies," instead of over the most direct route by public highway. The general rule of measuring distance is on a straight line along a horizontal plane from point to point, or in other words the shortest distance between two points. This was the rule generally applied by the early English and American authorities, but when the distance named contemplated traveling from point to point, as for instance in statutes relating to service of process and similar matters, distance has been taken to mean the distance by the usual traveled highway.

In construing statutes relating to school accommodations, where there is contemplated the passage to and from school of pupils attending school, it is well recognized that the distance is to be measured by the highways which are actually open, passable and available to the pupils for use in going to and from the schools. This does not mean that the closing of a road for ever so short a time necessarily creates a liability on the part of the board of education to transport pupils, which liability would not have existed but for such temporary closing of the road. What is contemplated is that the distance is to be measured along the most direct highway which, but for some unusual happening temporarily obstructing the way, would be open and available for use by the school pupils who desire to avail themselves of its use.

Section 7731, supra, was enacted in its present form in 1925. Its present provisions contain no direction as to the route over which measurement shall be made in determining the distance a pupil lives from the school, but simply provides that when such pupils live more than two miles from the school to which they are assigned, transportation shall be provided. Because the route is not indicated, it becomes necessary to construe the phrase "more than two miles from the school to which they are assigned."

The rule of construction of a revised statute by reference to the statute from which the revision has been made is stated in the case of *Heck* vs. *State,* 44 O. S. 536, as follows:

> "Where the language used in a revised statute is of such doubtful import as to call for a construction, it is both reasonable and usual, to refer to the statute or statutes from which the revision has been made."

Prior to the last amendment of Section 7731, supra, as enacted in 1921, 109 O. L. 289, said section contained this provision:

> "The transportation of pupils living less than two miles from the school house *by the nearest practicable route for travel accessible to such pupils* and the transportation of pupils who are pursuing high school branches shall be optional with the board of education except as provided in Section 7749, General Code." (Italics the writer's.)

The underscored clause in the above statute was omitted upon its revision in 1925, and I quote it merely for the purpose of showing the intent involved, with reference to measurement of distances, in legislation relating to transportation of pupils. Obviously, if measurement were to be made "by the nearest practicable route for travel accessible to such pupils" in determining whether or not transportation is optional with the board, the same method of measurement should be used in determining when it is compulsory with the board to furnish such transportation.

It is clear that the legislature in using the words in italics in the above quotation intended that the distance from the residence of pupils to school, which was determinative of the duty of boards of education to furnish transportation, was to be measured not by a straight line or "as the crow flies," but by the nearest practicable route of public travel, and also that the distance the pupils must travel, rather than the distance the school conveyance must travel if the pupils were transported, was the governing factor in determining the question.

The latest expression of the courts dealing directly with the question of the exact point between which measurements should be made in determining distances, as spoken of in statutes relating to the rights of pupils attending the public schools is that contained in the case of *Concord School District* vs. *Blue Ash School District,* 34 O. C. C. 213, in which the court said:

> "In determining the distance a pupil of a public school must travel under General Code Section 7735, the measurement should be made from the door of the schoolhouse along the center of the most direct public highway to the nearest point of the curtilage of the pupil's residence, including in said measurement the distances from the schoolhouse door and said point in the curtilage, respectively, by the most direct walk, lane, or path to the center of the highway."

While this case did not deal with transportation problems and related solely to the construction of Section 7735, supra, which section fixes the rights of pupils living more than one and one-half miles from the school to which they are assigned in the district where they reside to attend a nearer school, I see no reason, so far as distance from school is concerned, to apply a different rule to questions arising with reference to transportation than to those dealing with attendance problems. The Concord school case was affirmed without report by the Ohio Supreme Court in 88 O. S. 549.

In order properly to understand the language of the court in this case, it is necessary to look at the facts involved. These facts are set out in the opinion of the court below, the decision in which case was affirmed by the Circuit Court in 34 O. C. C. 213, supra. As stated by said court in *Blue Ash School District* vs. *Concord Special School District,* 11 O. N. P. (N. S.) 286:

> "The agreed statement of facts in this case discloses that the distance from the school house in the Concord special school district to the home of the children, 'as the crow flies,' is less than one and a half miles. This statement also discloses that the distance from the nearest corner of the school ground surrounding the school house to the residence of the children, measured along the most direct public highway and the lane or private right-of-way leading to the residence of said children, is less than one and a half miles. It is also agreed that the distance from the central entrance to the yard surrounding the school house, along the highway and the lane leading to the residence of the said children, is more than one and one-half miles; and that the distance measured from the school building itself to the intersection of the highway with the said lane, is more than one and one-half miles."

It will be observed that the statute under consideration in this case permitted pupils to attend a school other than the one to which they were assigned in the district where they resided if they lived more than one and a half miles from such school. The court decided that the distance in this particular case was more than one and a half miles.

The common pleas court in its decision of the case, after commenting on the facts said:

> "Therefore, the ruling of the court is that, in estimating the distance from the home to the school, the measurement begins at the exit from the curtilage —ordinarily the front gate—from which, if it is not on the highway, thence along the most direct established route, by lane or path, to the nearest highway, thence following the center line of the most direct course in the highway to the door of the school building."

Both the Common Pleas Court and the Circuit Court fixed the point at which measurement is to begin at one end of the route as the school house door, thence from the school house door by the nearest path to the center of the highway, thence along the center of the highway to the nearest point of the curtilage of the pupil's residence, (as stated by the Circuit Court) or to the exit of the curtilage, ordinarily the front gate (as stated by the Court of Common Pleas.)

In the case of *State ex rel.* vs. *Board of Education,* 20 O. N. P. (N. S.) 126, decided by the Common Pleas Court of Licking County in 1916, the court, in construing the statute which requires boards of education to transport pupils who live more than two miles from the nearest school, held as follows:

> "Under the law providing that in all rural and village school districts transportation shall be provided for pupils who live more than two miles from the nearest school house, 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 leading to the school house."

It will be noted that the Supreme Court in the case of *Board of Education* vs. *Board of Education,* 58 O. S. 309, and the Circuit Court in the Concord School District case, supra, fixes one of the points to which measurement is to be made, in determining the distance a pupil lives from the nearest school as "the nearest point of the curtilage." In the Concord School District case, supra, the Circuit Court affirms the decision of the lower court in 11 O. N. P. (N. S.) 286, which lower court fixes one of the points from which measurement should be made as the "exit of the curtilage." It will also be noted that in the later Licking County case the Common Pleas Court again fixes the point as the exit of the curtilage.

Although the language of the several courts with respect to this question is somewhat conflicting, it is my opinion that inasmuch as the distance contemplated is the distance which a pupil would travel "by the most practicable route for travel accessible to such pupil," the most reasonable construction of the statute would be that the measurement should be made to the exit of the curtilage of the residence of the pupil rather than to the nearest point of such curtilage.

I am, therefore, of the opinion that:

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 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 to 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.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1365.

TAX AND TAXATION—BOARD OF EDUCATION—PROPERTY NOT USED EXCLUSIVELY FOR PUBLIC PURPOSES NOT EXEMPT FROM TAXATION.

SYLLABUS:

Property owned by a board of education, acquired in anticipation of future needs of the schools and not used exclusively for any public purpose, is not exempt from taxation within the provisions of Section 2 of Article XII of the Constitution of Ohio.

COLUMBUS, OHIO, December 14, 1927.

The Tax Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—Some time ago you requested an opinion based upon the following statement of facts:

> "The board of education of the city of Cleveland has filed application for exemption from taxation of certain real estate purchased by said board. This real estate is acquired in anticipation of future needs of the city schools. The property on which the board is asking exemption is not now used for school purposes. The question now arises as to whether, under the constitution and laws of the state, such property may be exempted from taxation.
>
> You are kindly requested to advise the commission in this matter."

It is assumed that the board will at some future time use the property for school purposes and the property in question is either vacant ground or an income is derived therefrom.

Upon your request, opinion was at that time deferred until after the decision in our Supreme Court of the case of *Jones, Treasurer,* vs. *Conn, et al., Trustees,* which is reported in 116 O. S. 1, 155 N. E. 791, and is known as the "Marsh Foundation case." The Supreme Court did not determine this question, however, in its final decision.