

2693.

SCHOOLS—TRANSPORTATION OF HIGH SCHOOL PUPILS BY BOARD OF EDUCATIONAL IS OPTIONAL—EXCEPTION—SEE SECTION 7749 G. C.

The transportation of high school pupils by a board of education is optional (7731) except as to those mentioned in section 7749 G. C. and a board of education is not compelled to transport graduates of a second or third grade high school to a high school of higher grade, unless it has assigned such graduates to a higher grade high school outside the district and distant more than four miles from the residence of the pupil.

COLUMBUS, OHIO, December 14, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your inquiry of recent date, requesting the opinion of this department on the following question:

“If graduates of a second or third grade high school maintained by a board of education are of compulsory school age, must the board of education provide transportation for such graduates to a high school of higher grade outside the district?”

It is assumed that your question follows from Opinion No. 2447, issued to you on October 3, 1921, the first and second branches of the syllabus of which read as follows:

“1. In lieu of providing work in high school branches, as required of boards of education, under the provisions of section 7764-1 G. C., a board of education may transport to a high school outside the district all pupils of compulsory school age who have finished the ordinary grade school curriculum (7648 G. C.) and who live more than four miles from any high school.

“2. A board of education maintaining a second grade or a third grade high school is satisfying the requirements of section 7764-1 G. C. by providing work in high school branches for those pupils who have not graduated from such second or third grade high school.”

Section 7764-1 G. C. (Bing law) reads as follows:

“Boards of education shall provide work in high school branches, as mentioned in section 7648, General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided.”

This section is supplemental to section 7764 G. C. and should be read in conjunction with the latter. Section 7764 G. C. reads:

“The child in his attendance at school shall be subject to assignment by the principal of the private school or superintendent of

schools as the case may be, to the class in * * * high school * * * suited to his age and state of advancement and vocational interest, within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in case he lives more than * * * four miles from * * * a high school * * *. The board of education of the district in which the child lives shall have power to furnish such transportation."

It will be noted here that the superintendent of schools may assign the pupil "to the class in * * * high school * * * suitable to his age and state of advancement within the school district; or if the schooling (assignment to a class in high school) is not available within the district, then the superintendent or principal may assign without the school district, *provided * * * tuition is paid and * * * that transportation is furnished in case he (the pupil) lives more than * * * four miles from * * * a high school * * **"

Under this section the superintendent of schools may assign a graduate of a second or third grade high school of compulsory school age to a class or grade in high school outside his district and under the law the pupil is presumed to go to the school where he has been legally assigned. The section provides, however, that before he can be so assigned, outside his district, his tuition shall be paid and transportation shall be furnished if he lives more than four miles from the high school to which he has been assigned. Thus in the case which you have in mind, if the pupil was graduated from a second or third grade high school and was assigned to a high school of the first grade in another district, he would have to be transported by his local board of education under the provisions of section 7764 G. C. if the pupil lives more than four miles from the high school to which assigned, in order to make such assignment effective.

The language in section 7764 G. C. supra, is all that appears in the Bing law (H. B. 111) on the question of high school transportation. The section speaks of assignment of high school pupils (1) "within the district" and (2) "without the district," being separated by a semicolon. As to assignment "within the district" nothing is said on transportation, the provision as to "power" to transport appearing relative to assignment "without the district." The section does not say a board "shall transport" or that it is the "duty" of the board to transport, for it says the board shall have "power to furnish such transportation" outside the district which it did not have before.

When it enacted the Bing law (H. B. 111) the general assembly did not repeal, as it could have done, the language of section 7748 G. C., which reads:

"* * * except that, a board maintaining a second or third grade high school is not required to pay such tuition (to first grade high school) when the maximum levy permitted by law for such district has been reached and all the funds so raised are necessary for the support of the schools of the district. * * *

The same general assembly which enacted 7764 and 7764-1 G. C. (Bing law) also enacted the following language in section 7731 G. C. (109 Ohio law, 289) to wit:

"* * * the transportation of pupils who are pursuing high

school branches shall be *optional* with the board of education, except as provided in section 7749 G. C."

Section 7749 G. C. refers to districts where the elementary pupils are transported and entitles high school pupils to be hauled along with the elementary pupils.

The positive duty is cast upon each board of education by section 7764-1 to provide work in high school branches; the board has provided work in high school branches in its district when it operates a second or third grade high school which teaches the "high school branches, as mentioned in 7648 (7649) G. C." The general assembly has not said in 7764-1 G. C. the manner in which such "work in high school branches" shall be provided, nor has it said the amount of such work to be provided. Apparently this has been left as an administrative question (7690) to each board of education as to method in carrying out the mandate that "high school work" must be provided. It is not within the province of the attorney-general to legislate upon any matter, that function resting with the general assembly. The legislature in two laws upon transportation of high school pupils has said that such transportation is "optional" with the board (H. B. 216) and "power" to transport has been conferred in section 7764 (H. B. 111) to "without the school district." In neither is there a provision for compulsory transportation of high school pupils, except as to 7649 G. C. But a board of education may transport high school pupils in lieu of furnishing high school work in its district (Opinion 2447).

"Sec. 7731-4. * * * A failure of a parent or guardian to arrange to have a child transported to school, or his failure to have the child attend on the ground that the transportation is not supplied cannot be plead as an excuse for the failure of such parent or guardian to send such child to school or for the failure of the child to attend school."

In reply to your inquiry you are advised that:

The transportation of high school pupils by a board of education is optional (7731) except as to those mentioned in section 7749 G. C. and a board of education is not compelled to transport graduates of a second or third grade high school to a high school of higher grade, unless it has assigned such graduates to a higher grade high school outside the district and distant more than four miles from the residence of the pupil.

Respectfully,
JOHN G. PRICE,
Attorney-General.