

In this instance the bridge lies partly within and partly without the municipality. In so far as that portion which is within the municipality is concerned, I am of the opinion that the City of Zanesville has the authority to issue bonds and make the improvement and since the county commissioners are authorized, if it is necessary, to construct the whole of the bridge, I believe it follows that they have the right to improve that portion not within the municipality and issue bonds to provide funds therefor.

While there is some awkwardness attendant upon the letting of two separate contracts for the same improvement, I do not believe that there will be any insuperable obstacle encountered in so proceeding. Bids can be received concurrently and the awards made, as you suggest, to the same bidder. I accordingly am of the opinion that the county commissioners and the council may each separately award a contract to the same bidder for the proposed improvement and repair of that portion of the bridge within their respective jurisdictions. I am of the opinion that each of such authorities has the right to issue bonds for such improvement. I am, of course, not passing upon any question of bond limitations, since you have stated that I may assume that such limitations will not be exceeded.

It may be suggested that it would be easier for the City of Zanesville to contribute an agreed amount to the county commissioners and then permit the county commissioners to assume entire charge of the contract, but such a course would be of doubtful validity, especially in view of the fact that the issuance of bonds apparently is necessary. While the commissioners could doubtless receive contributions and devote them to the improvement in question, there is no specific authority in law authorizing the city to issue bonds for the purpose of contributing toward the cost of a county improvement. I am, therefore, of the opinion that the award of separate contracts is preferable.

Your third question is whether or not the action of the two authorities hereinabove described can be preceded by an agreement between the two to act in accordance with the procedure outlined and also to maintain the respective portions of the bridge thereafter.

While there is no specific statutory authority for such a course, I can see no objection thereto. While the primary duty of keeping the bridge in repair would, in the absence of contract, rest upon the county commissioners under Section 2421 of the Code, it is also proper for the municipal authorities to provide for such repair under the general powers of a municipality. Accordingly, if council deems it advisable to undertake by contract to assume the obligation of repairing that portion of the bridge located within the municipality, I believe there is power so to do.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2268.

SCHOOLS—TRANSPORTATION OF PUPILS—BOARD OF EDUCATION
FUNDS CONFINED TO PUBLIC SCHOOL SYSTEM.

SYLLABUS:

A board of education has no authority to provide and pay from public funds for transportation for pupils who attend high schools other than public high schools; and any payments made for such purpose by a board of education are illegal.

COLUMBUS, OHIO, June 22, 1928.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion, which reads as follows:

“The question has arisen in this county as to whether or not a rural board of education in a school district, which maintains no high school, may legally pay the transportation of some of the pupils of said school district attending high school, which high school is maintained by the Catholic Church and is a parochial school.

The particular board of education informs me that they are willing to pay the transportation to said school provided it is legal to pay same.

Will you kindly give me your opinion on this question.”

For the purposes of this opinion I do not deem it necessary to quote the several provisions of the statutes authorizing boards of education to provide transportation for pupils attending high school. It is sufficient to say that under certain circumstances, boards of education are authorized to provide for such transportation and to pay for same from public funds.

Your question is: Whether or not, when circumstances are such that under the law transportation to a high school is authorized, such transportation may be furnished if the high school in question be a parochial school maintained by the Catholic Church. Your question might be otherwise stated thus: Are boards of education in Ohio authorized to provide transportation under any circumstances for pupils attending high school, when the school which such pupils attend is other than a public school, as the term is used in the constitution and statutes applicable to the maintenance of the public school system of the state?

Parochial schools are understood to be schools conducted under the supervision of some particular sect, and, as such, have been held to be private schools as distinguished from public schools. See *Watterson vs. Halliday*, 77 O. S. 175; *Quigley vs. State of Ohio*, 5 O. C. C. 638.

Statutory recognition is given to private schools, in that attendance in such schools satisfies the requirements of the law relating to compulsory education. Private high schools may be granted certificates of grade, so as to put their work on a parity with public high schools, if the Director of Education be satisfied that the quality and extent of the work done in such schools merits such recognition. Section 7651-1, General Code, which authorizes the issuing of certificates of grade to private high schools, is as follows:

“The Director of Education shall have power to inspect private high schools or junior high schools and issue certificates of grade thereto provided the inspections are made with the consent of such schools; but such certificate of grade shall not make such schools eligible to receive public funds for tuition, and such certificates of grade unless renewed shall expire at the end of the second school year after their issue.”

In an Opinion No. 726 issued by this office, under date of July 11, 1927, and addressed to the prosecuting attorney of Ottawa County, it was said in this connection:

“The mere fact that private high schools may be recognized as being on a par with public high schools, so far as the kind and quality of instruction given

therein entitles them to be recognized as of the same grade as a similar public school is concerned, would in no way authorize boards of education to pay tuition to such private schools unless the statutes authorizing the payment of tuition in any case either specifically provides for payment of tuition to private schools or by their terms include both private and public schools."

The same observation may be made with reference to the payment for transportation. It is well recognized that boards of education have only such powers as are expressly granted to them or such as are necessarily implied as being necessary to execute the powers expressly granted. It is also well settled that all laws authorizing the expenditure of public funds are to be strictly construed, limited only to the accomplishment of the purpose for which they are enacted. The authority of a board of education either to pay tuition for pupils attending private schools or to pay for their transportation was quite exhaustively considered in Opinion No. 726 above cited, wherein it was held:

"There is no authority for the payment of tuition or the furnishing of transportation from public funds for pupils attending private schools, and any payments made therefor by a board of education are illegal."

In the course of the opinion, after quoting the provisions of Sections 7748, 7748-1, 7749 and 7749-1, General Code, relating to the transportation of high school pupils, it was said:

"By the plain terms of Section 7748 and 7749 the transportation therein authorized to be paid must be for that of pupils attending public schools. While the terms of Section 7749-1, *supra*, are not so clear, I am of the opinion that the high schools referred to therein are public schools and that the terms of that section cannot be extended to authorize the transportation of a child to a private high school. An examination of the related sections of the Code shows that in each instance the only schools under discussion are public schools, and their provisions have no application whatsoever to private schools. I feel that I should be unwarranted in extending the meaning of this particular section to include private schools, in the absence of specific language on the part of the Legislature. Especially is this so in view of the inhibition against the payment of tuition to private schools, since the transportation of a pupil to and from school, while in one sense purely for the benefit of the pupil, nevertheless is actually thus as effectual a financial assistance to the private school as would be the payment of tuition."

Moreover, the diversion of public schools funds for the benefit of any religious sect or sects is positively forbidden by the terms of the Constitution of the State of Ohio. In Article VI, Section 2 of the Constitution of Ohio, it is provided:

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state."

In the case of *State ex rel. Van Straten vs. Milquet*, 192 N. W. 392, the Supreme Court of Wisconsin, in which state there exists a constitutional provision with reference to schools similar to the one in this state above quoted, held:

" * * *

The officers of a school district must act within the limitation of their statutory authority, and, where they are by statute required to act in a specified manner, they must conform to the statutory requirements.

* * *

In view of the provisions of Const. Art. 10, Sec. 3, requiring the establishment of district schools which shall be free to all children and in which no sectarian education shall be allowed, the provision of St. 1921, Sec. 40.16, Subd. 1 (c), authorizing a district in which schools have been suspended to provide transportation to and from the school for all children residing more than one mile from the nearest school, must be limited, as is the provision of the same section for the payment of tuition, to the attendants at public schools in another district, and does not authorize the district to provide free transportation for children who desire to attend private schools.

Where a contract for the transportation of all the children of a district to an adjoining city was entire, and was intended to provide transportation for children attending parochial schools, as well as those attending public schools, the contract was void in toto, and the fact that two of the children transported by the contractor were attendants at the public schools does not save the contract."

In a later Wisconsin case, *Milquet vs. Van Straten et al.*, 202 N. W. 670, wherein this same contract was under consideration, it was held:

"Public funds, paid by a school district for transporting children, only two or three of whom attended public schools could not be retained in taxpayers suit on the theory of quantum meruit, in that cost of transporting two or three was as great as transporting all, since contract under which money was paid was void, and district could make itself liable for transportation only in specified manner prescribed by the statute."

In view of the foregoing, I am of the opinion, in specific answer to your question, that a board of education in this state is not authorized to provide transportation and pay therefor from public funds for pupils who attend high school, unless such pupils attend the public schools.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2269.

SCHOOLS—USE OF BUILDINGS—AUTHORITY OF BOARDS TO LEASE BUILDINGS—SALE AFTER FOUR YEARS.

SYLLABUS:

1. *Boards of education may permit the use of school buildings under their jurisdiction, for community center purposes, so long as such use does not interfere with the use of the buildings for school purposes.*
2. *Schools which have been suspended upon the consolidation of the schools of a district, must be reestablished upon petition signed by the parents or guardians of*