5408

1. HIGH SCHOOL GRADES, WHERE THREE MAINTAINED BY RURAL BOARD OF EDUCATION IN CERTAIN SCHOOL BUILDING — PUPILS ASSIGNED TO ANOTHER BUILDING — SUSPENSION — IF PETITON TO REOPEN CLOSED SCHOOL FILED BETWEEN MAY 1 AND AUGUST 1, ANY YEAR, WITHIN NEXT FOUR YEARS AFTER SUSPENSION, DUTY OF BOARD TO REESTABLISH HIGH SCHOOL AT FORMER LOCATION — SECTIONS 7684, 7730 G.C.

2. SIGNATURES, PARENTS OR GUARDIANS OF PUPILS NOT YET FIFTEEN REQUIRED ON PETITION TO REOPEN SUSPENDED SCHOOL — REQUIREMENTS — OPINION 3077, PAGE 1271, OPINIONS ATTORNEY GENERAL, 1934, 1 AND 3 BRANCHES OF SYLLABUS, OVERRULED.

SYLLABUS:

1. When three high school grades are maintained by a rural board of education in a certain school building and such board of education, acting under authority of Section 7684, General Code, assigns all the pupils in said grades to another school building in its district with the apparent intention of discontinuing the maintenance of those grades at the place where they formerly had been maintained and to thereafter maintain said high school grades in the building to which the pupils were assigned, said action amounts to a suspension of such grades within the meaning of Section 7730, General Code, and if a petition as prescribed by said section is filed with such board of education between May 1 and August 1 of any year, within the next four years after such suspension, it is the duty of such board of education to reestablish said high school at its former location.

2. In determining the sufficiency of a petition for the reopening of a suspended school filed pursuant to Section 7730, General Code, the signatures of only such parents or guardians of pupils who are eligible to attend such suspended school in the ensuing school year and who were enrolled in a public school during the school year next preceding the filing of such petition and had not reached their fifteenth birthday prior to the closing of such preceding school year, may be recognized. (Opinion of the Attorney General, No. 3077, for the year 1934, overruled in the first and third branches of its syllabus).

Columbus, Ohio, August 25, 1942.

Hon. Glenn R. Immel, Prosecuting Attorney,
Urbana, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

"On the eighteenth day of June, 1942, the Madriver Rural Board of Education by resolution assigned twenty-seven pupils from the Terre Haute School to the Westville School, a copy of said resolution is as follows:

'Whereas, the Madriver Rural Board of Education desires to maintain the best high school facilities possible for the youth of the Madriver Rural School District.

Whereas, the Madriver Rural Board of Education desires to maintain the grade schools as they now exist, and has no desire of or intention of suspending any school.

Whereas scarcity of teachers and increased costs of maintenance and supplies makes a serious financial problem for the Madriver Rural Board of Education.

Whereas, the cost of two (2) high schools in the Madriver Rural School District makes it impossible to offer extensive courses in Commerce, Industrial Arts, Physical Sciences, and Vocational Agriculture.

Whereas, the Madriver Rural Board of Education desires to take advantage of the authority granted it by Section 7684 of the General Code of Ohio, which specifically says: "Boards of Education may make such an assignment of the youth of their respective districts to the schools established by them as in their opinion best will promote the interests of education in their districts".

Be it resolved that under the authority of Section 7684 of the General Code of Ohio, the following students (names) be and are here assigned to the high school maintained by the Madriver Rural Board of Education at Westville for the school year 1942-1943.'

The Terre Haute School and the Westville School are both maintained by the Madriver Rural Board of Education and are in the same school district. The twenty-seven pupils being all of the students who, during the school year 1941-42, attended the Terre Haute High School in grades nine and ten and being all of the students who, during said school year, attended grade eight in the Terre Haute Grade School. Grade

twelve has never been maintained at the Terre Haute School, but has always been maintained at the Westville High School. All said students attended school in the same building at Terre Haute, and were under the supervision of the Madriver Rural Board of Education. Grades one to eight inclusive will remain at Terre Haute in the same Terre Haute School and in the same building.

On the twenty-ninth day of July, 1942, the parents of thirty-nine children who attended the Terre Haute School filed a petition, under Section 7730, a copy of which is as follows:

'Gentlemen:

WHEREAS, you as the Madriver Rural Board of Education have, by virtue of a resolution passed under authority purportedly granted you by Section 7684 of the General Code of Ohio, suspended the Terre Haute High School situated in your school district;

We, the undersigned persons, being the parents and guardians of children between seven and fifteen years of age, living in Madriver Rural School District and enrolled in school, and who reside nearer Terre Haute High School than to any other school of said district, do hereby request, under and by virtue of Section 7730 of the General Code of Ohio, that said suspended school, to-wit: Terre Haute High School, be reopened.'

We would appreciate your opinion as to whether or not the transfer of those twenty-seven pupils operates as a suspension, or as a suspension of the Terre Haute High School, making the provisions of G.C. 7730 applicable.

If, in your opinion, said transfer operates as a suspension, should, in your opinion, the Madriver Board of Education consider the Petition as a proper one, as one signed by a sufficient number of parents, and as one making it mandatory upon said Board to re-transfer said twenty-seven pupils to the Terre Haute School, when the petition discloses that forty-five parents signed the petition representing thirty-nine children, that out of the thirty-nine children, only eleven are affected by the transfer, that out of the eleven children affected by the transfer, five are past their fifteenth birthday. The parents of sixteen affected children did not sign the petition."

From your presentation of the matter it appears that for some time past there was maintained in the Madriver Rural School District in Champaign County an elementary school consisting of grades 1 to 8 at what is known as the Terre Haute School. In the same building three high school grades were maintained, the same being the 9th, 10th and 11th grades. A high school grade known as the 12th grade was maintained at Westville in the said district. On June 18, 1942,

the Madriver Rural Board of Education, acting by authority of Section 7684, General Code, assigned twenty-seven pupils, being all the pupils who were eligible to attend the 9th, 10th and 11th grades in the school year 1942-1943, to the Westville School, thereby evincing an intention to abandon the maintenance of the three high school grades at Terre Haute during the coming year and to establish and maintain them at the Westville School.

Thereafter, on the 29th day of July, 1942, a petition was presented to the Madriver Board of Education in pursuance of Section 7730, General Code, requesting that the high school grades theretofore maintained at Terre Haute and which had been virtually closed by reason of the assignment of all the pupils eligible to attend those grades, be reopened. The petition was signed by the parents and guardians of thirty-nine pupils who reside nearer to the Terre Haute School than to any other school in the district and who purport to be as stated in the petition, between seven and fifteen years of age and enrolled in school.

The question presented is whether or not under the circumstances the Madriver Board of Education is required under the law to "reopen" the three high school grades mentioned and maintain them at Terre Haute during the coming year.

The pertinent part of Section 7730, General Code, in pursuance of which the petitioners mentioned purported to act, reads as follows:

> "The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, and teachers' contracts shall thereby be terminated after such suspension. * * *
>
> Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year; provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

The law is well established that where a school is suspended by

authority of Section 7730, General Code, and thereafter a proper petition is filed as prescribed by the statute asking that the school be reopened, it becomes the mandatory duty of the board of education to reopen the school.

State v. Board of Education, 95 O.S., 367;
Christman v. State, 45 App., 541;
Opinions of the Attorney General, 1928, page 1565;
Opinions of the Attorney General, 1932, page 1019

Likewise, there can be no question but that a board of education may by authority of Section 7684, General Code, assign any or all school pupils in their respective districts to such schools maintained by them as they think proper. When all the pupils who normally would attend a certain school are assigned to some other school, a question arises as to the effect of such action. Does it amount to a suspension of the school? Obviously, it virtually closes a school to take all the attendants away from it, and amounts to the same thing as suspension and in effect is a suspension of the school. I do not think a board of education may forestall the rights of the patrons of a school as fixed by Section 7730, General Code, to have a closed school reopened by merely negativing an intention to suspend a school in a resolution assigning all the pupils away from it and thereby in effect closing it. One of my predecessors in 1919 passed upon this question and held:

> "Where a board of education, acting under the provisions of section 7684 G.C., assigns all of the pupils of a school district to another district school or schools, such assignment operates as a suspension of the school in question, even though formal action regarding suspension was not taken under section 7730 G.C.; and where the district school has been closed in this manner, the patrons of the district have recourse to the provisions of section 7730 G.C., providing for the presentation to the board of education of a petition signed by a majority of the electors in the territory of the suspended district and showing also that the average daily attendance of the pupils who reside in such district, though attending other schools to which assigned, is twelve or more, such school must be re-established."

See Opinions of the Attorney General for 1919, page 1536.

In the instant case, it seems clear that the three high school grades which had been maintained at Terre Haute were suspended

by force of the resolution of the Madriver Board adopted on June 18, assigning all the pupils who normally would attend those grades in the school year 1942-1943, to the Westville School, and, in my opinion, this amounts to the suspending of a school within the provisions of Section 7730, General Code. It will be observed that the authority extended to rural and village boards of education by said Section 7730, General Code, is to suspend "any school in such district". This includes high schools as well as elementary schools. In many statutory provisions, high schools are referred to in such a way as to indicate that they are to be recognized as being separate and different schools than elementary schools.

An elementary school is defined in Section 7648, General Code, as one in which instruction and training are given in certain prescribed subjects, primarily to students of the first to eighth school years inclusive. A high school is defined in Section 7649, General Code, as one of higher grade than elementary school, in which certain named subjects are taught.

Since 1902, when the term "high school" was first applied to schools of a higher grade than primary or elementary schools there has been developed through a long and varied course of legislation a great deal of statutory law relating to high schools. To mention a few of the statutes relating to high schools:

Section 7645-1, General Code, provides that no person shall be admitted without condition to any high school whose credentials do not show that they have studied in the seventh and eighth grades the Constitution of the United States and the Constitution of Ohio for a prescribed period.

Section 7651, General Code, provides for the classification of high schools by the Director of Education.

Section 7652, General Code, defines high schools of the first, second and third grades as being schools in which the courses of study require normally for completion, four, three and two years respectively, beyond the eighth grade.

Section 7655-7, General Code, provides who shall be admitted to a high school without examination.

Section 7656, General Code, provides for the granting of diplomas to graduates of high schools.

Section 7658, General Code, provides for entrance examinations for high school graduates for matriculation in state supported universities.

Sections 7747, 7748 and 7750, General Code, provide for the payment of tuition by boards of education in districts which do not maintain a high school for resident pupils eligible to attend high school and who attend a high school in another district.

Section 7748, General Code, expressly provides that; "No board of education is required to pay the tuition of any pupil to high school for more than four school years".

Sections 7749 and 7749-1, General Code, deal with the transportation of high school pupils, and Section 7764, General Code, provides for the assignment of pupils to high schools. In Section 7595-1c, General Code, wherein the "minimum operating cost" of schools under the school foundation program is defined it is expressly provided:

> "For the purposes of this section an elementary school is defined as any school enrolling pupils in one or more of the grades from one to eight, inclusive, and a high school as any school enrolling pupils in one or more of the grades from nine to twelve, inclusive. Such schools are to be taken as separate and distinct schools even though housed in the same building or in separate buildings on the same site".

From the foregoing, it seems clear that a "high school" is a separate school from an elementary or primary school and that the Legislature in providing in Section 7730, General Code, that a board of education may suspend temporarily or permanently "any school" thereby authorized the suspension of a high school and the fact that the high school is maintained in the same building as the elementary school, and the elementary school is not suspended, makes no difference. In fact, in the case of Board of Education v. Waits, 119 O.S., 310, the suspension of a high school was involved, and the suspension of the school was recognized.

I come now to a consideration of questions relating to the suf-

ficiency of the petition that was filed, requesting the reopening of the school in question.

At the outset, it is well to remember that in the application of the provisions of Section 7730, General Code, with respect to the reopening of a closed school, by the filing of a petition therefor, the rule of strict construction should be applied. Circleville Board of Education v. State, ex rel. Moody, 6 O.L.A., 365; Board of Education v. State, ex rel. Brown, et al., 37 App., 453. In the former case it was said in the opinion of the court:

> "It will be seen that an extraordinary power is conferred upon what may be a small minority of a particular district to override the judgment of a board of education, elected for the purpose of administering the school laws and officially charged with all of the responsible duties pertaining to that office.
>
> It seems clear that when a group that may be as small as two or three householders, charged with no particular responsibility and not acting under oath, by simply affixing their signatures to a proper petition, may subvert the educational policy established by the public officials charged with formulating and carrying out such policy, such group should fully and literally comply with all of the provisions of the statute conferring the right sought to be enforced."

From the terms of the statute it will be observed that the petition filed for the reopening of the suspended school must be "signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district."

On the sufficiency of the petition filed, it obviously is necessary to determine what is meant by the phrase "enrolled in school." In the case of Board of Education v. State, ex rel. Brown, et al., supra, it is held:

> "Those petitioning to reopen a school under favor of Section 7730, General Code, must be representatives of enrolled school children, as defined by Section 7784, rather than enumerated children, as defined by Section 7794."

In the course of the opinion in said case, Judge Mauck, speaking for the court, stated:

> "Enumerated children include all children eligible so far as age is concerned to admission to the public schools. Enrolled children are those who have actually been in attendance at a particular school during the previous year. For the most part the two groups are identical, but an enumerated child who during the previous year has attended a private or parochial school, or who for physical or other reasons has attended no school, is not an enrolled child, and cannot be considered in applying the provisions of Section 7730."

While the above case distinguishes enumerated children from enrolled children, nothing is contained therein which would indicate that the term "enrolled in school" should be construed to mean "enrolled in the suspended school." Nor is there any other decision in Ohio which places such a limited meaning on the words in question. The conclusion that the words "enrolled in school," as the same appear in Section 7730, General Code, should not be construed to mean "enrolled in the suspended school" is supported by the provisions of Section 7730-1, General Code, which, in so far as the same are pertinent hereto, read:

> "In order to protect the rights of the petitioners mentioned in section 7730, where a school has been suspended through either or any of the proceedings mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said building has been condemned for school use by the director of industrial relations of Ohio; * * * "

The above language which prohibits a board of education from disposing of the school building and real estate located in the territory of a suspended school until after four years from the date of such suspension, in order to protect the rights of the petitioners mentioned in Section 7730, General Code, clearly implies that a petition may be filed for the reopening of a suspended school at any time within four years after such school has been suspended, although obviously no children would have been enrolled in such school since the suspension thereof.

On the other hand, if the words in question are extended to their full literal meaning, it appears to me that the conclusion reached will result in absurd consequences and defeat the purpose of the law. For

instance, if the parents or guardians of all children between the ages of seven and fifteen, who are enrolled in public school, may properly sign a petition for the reason that their residences are nearer to the suspended school than to any other, the parents or guardians of high school pupils between the ages of seven and fifteen would have a voice in the reopening of a suspended grade school if they happen to live nearer to such suspended grade school than any other in the district. This obviously is not the intent of the law.

It is a well established rule that the language of a statute should at all times be given a reasonable and rational construction and one that is in general conformity with the purpose of such statute. In my opinion the statute in question should be construed so as to limit the signers of a petition to the parents or guardians of those children between the ages of seven and fifteen, who were enrolled in a public school during the school year next preceding the filing of the petition and who normally would attend the suspended school during the ensuing year if the same should be reopened. Obviously, it is only the parents or guardians of children who are affected by the suspension of a school who should be heard to complain with respect to such suspension. This conclusion, it seems to me, is amply supported by the language of the statute and at the same time effectuate the object and purpose thereof.

I am not unmindful of the fact that the above conclusion is at variance with that reached in an opinion rendered by the then Attorney General on August 24, 1934 (Opinions of the Attorney General, 1934, page 1271), wherein it was held, as disclosed by the first and third branches of the syllabus:

> "1. Children who are 'enrolled in school' within the meaning of that expression, as used in Section 7730 General Code, wherein certain requirements are set up for a valid and effective petition which may be filed with a Board of Education to require the said board to re-open a school which has been suspended by favor of the statute, are those who have actually been in attendance at the particular school during the last school year prior to the suspension of the said school.
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> 3. Where a petition has been filed for the re-opening of a suspended school in pursuance of Section 7730, General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of the said school

> and who had, during said year graduated from the grades given in said school, should be regarded as having been 'enrolled in school' as the term is used in said statute, for the purpose of the said petition."

While Section 7730, General Code, when standing alone, is susceptible of an interpretation which will lead to the conclusion reached in the above opinion, it appears to me that the provisions of said section, when read in the light of Section 7730-1, General Code, and considered in connection with the obvious purpose of such statutes, should be given the meaning hereinabove set out.

Moreover, if the words of a statute are susceptible of two constructions, one which will carry out and the other defeat the manifest object of such statute, they should receive the former construction. I am therefore of the opinion that the 1934 opinion, in so far as the same is inconsistent herewith, should be overruled.

In your inquiry you state that of the thirty-nine children represented on the petition by signatures of their parents or guardians "only eleven are affected by the transfer." I assume you mean by this that only eleven of the thirty-nine would be eligible to attend the three suspended high school grades in the school year of 1942-1943. If that is the case, and no other qualified children within proper age limits are represented on the petition, manifestly the petition is not sufficient, as the statute expressly provides that the petition must be signed by the parents or guardians of twelve children.

You also state that some of the children represented in the petition are now past their fifteenth birthday but you do not state when they reached such birthday. I have no difficulty in reaching the conclusion that any child represented in the petition, who had enrolled in school during the past school year and who reached the fifteenth anniversary of his birth since school for the year had been dismissed, should be counted as one of the necessary number of children to satisfy the requirements of a petition filed in pursuance of the statute provided, of course, such child is eligible to attend the high school during the ensuing school year.

When, however, his fifteenth birthday was reached during the past school year, a different and more difficult question is presented. The

question has not been considered in any reported case in Ohio, and the courts of other states bearing upon the question are not in accord. Some of these authorities are collated in Volume 84 of A.L.R., page 389.

In the case of Jackson v. Mason, 145 Mich., 338, 108 N.W.,697, 698, it was held that a child of the age of fifteen years and three months was not included in the class described in the statute as "any child between and including the ages of seven and fifteen years." It was urged in this case that to give any force to the word "including," the section must be construed to include children during the entire fifteenth year and until they become sixteen years of age.

The court said:

> "A child over fifteen years of age is not between the ages of seven and fifteen years."

A similar holding was made in the case of Hobson v. Postal Telegraph Cable Company, 161 Tenn., 419, 32 S.W.2d, 1046, and in Gibson v. People, 44 Col., 600, 99 Pac., 333.

The question of whether the signature of a parent, whose child became fifteen years of age during the school year preceding the filing of the petition, should be counted was also considered in the 1934 opinion. With respect thereto it was stated in said opinion:

> "Where a petition has been filed for the re-opening of a suspended school, in pursuance of Section 7730, General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of said school, and who had become 15 years of age during the said school year, should not be regarded as having been 'enrolled in school,' as the term is used in the said statute, for the purpose of said petition."

In view of the above, it would appear that a child whose fifteenth birthday was reached during the school year last passed was more than fifteen years of age during a portion of such school year, and it is consequently my opinion that such child should not be regarded as a child between the ages of seven and fifteen years within the meaning of Section 7730, General Code.

Inasmuch as your letter does not state when the children over fifteen years of age, represented on the petition, arrived at such age, I am unable to definitely state whether the petition which was filed is sufficient. This question, however, can be determined in accordance with the principles hereinabove set out.

In conclusion it is my opinion that:

1. When three high school grades are maintained by a rural board of education in a certain school building and such board of education, acting under authority of Section 7684, General Code, assigns all the pupils in said grades to another school building in its district with the apparent intention of discontinuing the maintenance of those grades at the place where they formerly had been maintained and to thereafter maintain said high school grades in the building to which the pupils were assigned, said action amounts to a suspension of such grades within the meaning of Section 7730, General Code, and if a petition as prescribed by said section is filed with such board of education between May 1 and August 1 of any year, within the next four years after such suspension, it is the duty of such board of education to reestablish said high school at its former location.

2. In determining the sufficiency of a petition for the reopening of a suspended school filed pursuant to Section 7730, General Code, the signatures of only such parents or guardians of pupils who are eligible to attend such suspended school in the ensuing school year and who were enrolled in a public school during the school year next preceding the filing of such petition and had not reached their fifteenth birthday prior to the closing of such preceding school year, may be recognized. (Opinion of the Attorney General, No. 3077, for the year 1934, overruled in the first and third branches of its syllabus).

Respectfully,

THOMAS J. HERBERT
Attorney General.