

expended without the consent and approval of the Controlling Board therein provided for.

I am herewith returning, without my approval, the deed executed by said George C. Matthes and Ethel N. Matthes, conveying the premises under investigation. In the granting clause of said deed the words "Department of Agriculture" should be stricken out. Likewise, in the clause of said deed containing the covenant of seizing and against encumbrances, the words "and thereafter" should be eliminated, and a new deed making these corrections should be executed.

I herewith enclose the abstract and deed submitted.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1672.

BOARD OF EDUCATION—PUPIL RESIDING MORE THAN 4 MILES FROM HIGH SCHOOL—BOARD MUST PAY TUITION TO HIGH SCHOOL ATTENDED.

**SYLLABUS:**

*A board of education, which does not furnish transportation to the high school maintained by it, is required to pay the tuition of pupils residing within the district and more than four miles from such school, who attend a nearer high school in another district.*

COLUMBUS, OHIO, February 3, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

"A high school pupil lives in a district which maintains a third grade high school but lives over four miles from that high school by the most direct route of public travel. He lives nearer the first grade high school in another district. The board of education of the district in which he lives will not undertake to transport him to the high school of that district or to board him in lieu of transportation. In fact transportation to the high school in his own district owing to the condition of the roads would be costly, if not impossible.

Can the board of education of the district in which he lives be compelled to pay his tuition to the nearer high school in the first and second years of the course, which years are also covered by the course of study in the high school in his home district, if the board will not pay his transportation to the high school in his own district or his board in lieu thereof?"

Transportation of high school pupils is governed by Section 7749-1, General Code, which as amended in 1925, reads as follows:

"The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation

of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

By the terms of Section 7749, General Code, it is provided, in substance, that in rural school districts where the elementary schools have been centralized, and transportation furnished, all pupils who are eligible to admission to high school are entitled to transportation to the high school of such rural district.

It will be observed that in all school districts, other than rural districts where in the elementary schools have been centralized and a high school is maintained and transportation furnished, boards of education are not required to furnish transportation to a high school unless the county board of education deems and declares such transportation to be advisable and practicable.

It is provided further by the terms of Section 7748, General Code, that

"A board of education may pay the tuition of all high school pupils residing more than four miles by the most direct route of public travel from the high school provided by the board when such pupils attend a nearer high school, or in lieu of paying such tuition the board of education may pay for the transportation to the high school maintained by the board of the pupils living more than four miles therefrom."

Thus it will be noted that in cases where pupils living more than four miles from the high school maintained in the district where they reside, attend a nearer high school, it is optional with the board of education whether transportation be furnished to the high school maintained by the board, or the tuition of the pupils be paid in the nearer high school which the pupils attend.

The board can not, by refusing to provide transportation to the high school, escape liability for the payment of tuition for such pupils as choose to attend a nearer high school than the one maintained by the board, providing the one maintained by the board is more than four miles from the pupil's residence. It is provided by Section 7738, General Code, as follows:

"Every board of education in this state must provide sufficient accommodations in the public schools for all children in their districts compelled to attend the public schools under the provisions of this chapter. Authority to levy the tax and raise the money necessary for such purpose, is hereby given the proper officers charged with such duty under the law."

The Supreme Court in the case of *Sommers vs. Putnam County Board of Education*, 113 O. S. 177, held:

"While a board of education has an option as to the method by which it will make high school branches accessible to school children in the district, it can not, by refusing to exercise any one of the options, absolve itself from liability."

I am therefore of the opinion that boards of education, which do not furnish transportation to the high schools maintained by them, are required to pay the tuition of pupils residing more than four miles from such schools when such pupils choose to attend nearer high schools in other districts.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*