such treasurer is to stand charged. At each October settlement, he shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor. After deducting the amount of such taxes as returned delinquent and the collection fees allowed the treasurer from the several taxes charged on the duplicates in a just and ratable proportion, the treasurer shall be held liable for the balance of such taxes. After first correcting any error which may have occurred in the apportionment of taxes at any previous settlement, the auditor shall certify the balance due the state, the balance due the county, and the balance due each other taxing district, and forthwith shall record such list of delinquencies in his office."

This section, it is observed, provides that at each October settlement, the county auditor shall take from the duplicates previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the assessments on which such delinquent taxes are charged as described on such duplicates. It is quite clear that this is the list which is to serve as the basis of the delinquent personal property tax list to be made by the county auditor under the provisions of section 5694, General Code, as amended, and is "the list of such taxes returned as delinquent" referred to in said section.

As noted in Opinion No. 3767, directed to you under date of November 16, 1931, the delinquent personal tax list which the county auditor is required to make under the provisions of section 5694, General Code, as amended, is not to be made up by him until the October, 1932, settlement had by him with the county treasurer under the provisions of section 2602, General Code, above quoted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4102.

SCHOOL—PUPIL MUST ATTEND SCHOOL TO WHICH ASSIGNED—FACT A CLOSER SCHOOL EXISTS IMMATERIAL WHERE BOARD OF EDUCATION FURNISHES TRANSPORTATION.

SYLLABUS:

No authority exists for a child to attend an elementary school, other than the one to which it is assigned, at the expense of the district of its residence, providing the board of education of the school district where the child resides will furnish transportation for it to the school to which it is assigned, regardless of the distance it may live from the school to which it is assigned.

COLUMBUS, OHIO, February 27, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion with reference to the following:

> "Two adjacent school districts in this county are the Cromers School District and the Hopewell Township School District. A child of school age attending the elementary school resides in the Cromers School District, about two miles from the nearest school in the Cromers District, and about one and one-half miles from the nearest school in the Hopewell School District. The child desired to attend the Hopewell School and did so last year. The Hopewell Board of Education demanded payment of tuition, and the Cromers School District refused to pay. This matter was finally adjusted by part payment of the amount demanded. Now the Cromers School District inquires as to whether or not it must pay tuition and transportation for this child to the Hopewell School, even though it is ready and willing to provide and furnish transportation to a school in the Cromers School District, which as I have stated above, is about two miles distant from the home of the child.
>
> My query is whether or not the Cromers Board of Education must pay the tuition if the child elects to attend the Hopewell School, if the Cromers Board of Education is ready and willing to provide transportation for the child to a school in the Cromers District."

From the facts stated, it appears that a child who attends an elementary school resides more than one and one-half miles from the school maintained in the district of its residence and that if it attends this school transportation will be furnished thereto by the board of education of the district. The parents of the child desire that it attend a nearer school in another district. Under those circumstances the question arises whether or not the district wherein the child resides is liable for tuition and transportation if the child should attend the school outside the district of its residence.

The provisions of Sections 7735 and 7737, General Code, are pertinent to your inquiry. Section 7735, provides in part:

> "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."

Section 7737, provides as follows:

> "When the schools of a district are centralized or transportation of pupils provided, the provisions of the next two preceding sections shall not apply."

For a great many years it has been provided by law that elementary school pupils may attend a nearer school within or without the district if they live more than one and one-half miles from the school to which they are assigned. The law

to that effect was first enacted in 1892 (89 O. L., 233). That was before the day of centralization of schools and before any provision was made by law authorizing boards of education to transport pupils to school. In 1904, after the centralization of schools and transportation of pupils was authorized, the law referred to above was amended so as to provide that when pupils were transported to the school to which they were assigned, the provision with reference to their attending a nearer school if they lived more than one and one-half miles from the school to which they were assigned did not apply. Both these provisions were contained, at that time in Section 4022a, Revised Statutes.

When the statutes were codified in 1910 Section 4022a was codified as Sections 7735, 7736 and 7737 of the General Code. Sections 7735 and 7737, General Code, have not been changed since the codification of 1910.

The language of these two sections is unambiguous and so clear as to leave no room for interpretation or construction. It is clear that, even though a child may live more than one and one-half miles from the school to which it is assigned in the district where it lives, no authority exists for its attending any other school at the expense of the district of its residence, providing transportation is or will be furnished for it to the school to which it is assigned.

I am therefore of the opinion, in specific answer to your question that the Cromers Board of Education is not required to pay tuition for the child in question if it attends the Hopewell School, providing the Cromers Board will furnish transportation for the child if it attends the Cromers School.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4103.

BUILDING AND REPAIR FUND—LIBRARY BOARD—MAY NOT BE INVESTED IN INTEREST BEARING SECURITIES.

SYLLABUS:

No part of a building and repair fund provided for by section 7638, General Code, can be invested in interest bearing securities, but such fund must be placed in depositories as provided by section 7640-1, General Code.

COLUMBUS, OHIO, February 27, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of the following inquiry from you:

> "You are respectfully requested to furnish this department your written opinion upon the following:
>
> Under the provisions of Section 7638 of the General Code, a Library Board may set apart certain funds to the credit of a special Building and Repair Fund. *Question*:—May this fund be invested in interest bearing securities or is it required to remain in the depository established by the Library Board."