

may operate a restaurant other than in accordance with Sections 843 et seq., of the General Code. Cases may occur where the facts are such as clearly to bring the owner or proprietor of a grocery store within the provisions of these sections. All that is herein decided is that upon the facts stated in your communication the law is not being violated.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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BOARD OF EDUCATION—RURAL BOARD MAY COMPEL RURAL BOARD OF ANOTHER COUNTY TO PAY TUITION FOR PUPILS ATTENDING ITS HIGH SCHOOL—COUNTY BOARD OF EDUCATION ADVISES RURAL BOARD AS TO TRANSPORTATION OF HIGH SCHOOL PUPILS.

SYLLABUS:

1. *A rural board of education of one county may compel a rural board of education of another county to pay tuition for pupils attending high school in its district and residing in the other district, the same as though the two rural districts were in the same county.*

2. *It is not mandatory upon rural boards of education to pay for transportation of high school pupils unless the same is deemed and declared by the county board of education of which the rural district is a part, to be advisable and practicable.*

COLUMBUS, OHIO, August 11, 1927.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“Can a Township Board of Education of one county compel a Township Board of Education of another county to pay transportation and tuition for pupils of one township attending high school in another county?”

Your inquiry resolves itself into two questions, first; as to the liability of a rural board of education of one county to a rural board of education of another county for tuition for high school pupils residing in its district and attending high school in the rural district of the other county, and secondly; the liability of such a board of education for the transportation of pupils to a high school in another county.

Section 7747, General Code provides in part, as follows:

“The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. * * *

The district superintendent shall certify to the county superintendent each year the names of all pupils in his supervision district who have completed the elementary school work and are eligible for admission to high school. The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion which shall entitle the holder to admission to any high school. Such certificate shall be furnished by the superintendent of public instruction."

Sections 7748 and 7748-1, General Code, make provision requiring boards of education maintaining high schools with only limited courses, to pay tuition to high schools of a higher grade to supplement the work of the local high school. Section 7750 provides that boards of education not having high schools may enter into an agreement with other boards of education which do maintain high schools for the schooling of all its school pupils and provides:

"When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such notice to be filed not less than five days previous to the beginning of attendance."

Sections 7747, 7748 and 7750, General Code, were formerly included within the provisions of Section 4029-3, Revised Statutes, which was a part of what was formerly known as the Boxwell Law under authority of which pupils of sub-districts and special districts were admitted to examination, and a diploma was issued to those who were successful. Under the provisions of that act, boards of education of the special or township district in which any pupil receiving a diploma resided were authorized to pay the tuition of such pupils who thereafter attended any village or city high school in the county. Subsequently these provisions were so amended as to permit attendance in an adjoining county and later were amended as to make the payment of tuition mandatory. In 1902 the terms of this statute were so extended as to admit to the examination pupils of township, special and joint sub-districts and to entitle those receiving diplomas to enter any high school in the state. However, tuition was required to be paid only by boards of education of districts which maintained no high school. In 1909 an amendment was made, the effect of which was to require boards of education which maintained a high school with only limited courses, to pay tuition to a high school of a higher grade to supplement the work of the local high school. In 1910 the codifying commission subdivided Section 4029-3, Revised Statutes, making therefrom Sections 7747 to 7751, inclusive, of the General Code. Section 7747, General Code, then provided for the payment of tuition of pupils who were eligible for admission to high schools and who resided in rural school districts. In 1921, this statute was amended so as to include other districts as well as rural school districts.

An examination of Section 7747, General Code, and cognate sections relating to the requirement of one board of education to pay the tuition of high school pupils attending school in other districts discloses that nowhere is there any limitation as to what other district the pupil may attend within the state except that contained in Section 7750, supra. In fact the statutes do provide that pupils holding certificates

of promotion, and residing in the districts in which no high school is maintained, are entitled to admission in any high school in the state and may select the high school which they desire to attend, providing the board of education of the district in which they have a legal residence does not enter into an agreement with some other board of education maintaining a high school in the same civil township or an adjoining township and within three miles of the residence of such pupils. In case a pupil selects the high school, he must give due notice in writing to the clerk of the board of education of the district in which he resides, not less than five days previous to the beginning of such attendance, of the name of the school to be attended and the date the attendance is to begin.

Coming now to your second question, it should be borne in mind that under no circumstances can one board of education compel another board of education to pay transportation for pupils attending school, the question of the right of a pupil to have transportation paid by the board of education of the district in which he resides being between the pupil and his parents or guardian and the board of education, and not between the board of education of the district in which he does not reside but where he has a right to attend school, and the board of education of the district in which he does reside.

The payment for transportation of high school pupils is regulated by Sections 7749 and 7749-1, General Code, which read as follows:

Sec. 7749. "When the elementary schools of any rural school district in which a high school is maintained, are centralized and transportation of pupils is provided, all pupils resident of the rural school district who have completed the elementary school work shall be entitled to transportation to the high school of such rural district, and the board of education thereof shall be exempt from the payment of the tuition of such pupils in any other high school for such a portion of four years as the course of study in the high school maintained by the board of education includes."

Sec. 7749-1. "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."

It will be noted from the provisions of Section 7749-1, *supra*, that in no case shall a rural board of education be required to provide high school transportation unless the payment for such transportation is deemed and declared by the county board of education advisable and practicable, in which case the board of education of the district in which the child resides is required to furnish such transportation.

Specifically answering your questions therefore, I am of the opinion:

1. That a rural board of education of one county may compel the rural board of education of another county to pay tuition for pupils attending high school in its district and residing in the other district the same as though the two rural districts were in the same county.

2. It is not mandatory upon rural boards of education to pay for transportation of high school pupils, unless the same is deemed and declared by the county board of education of which the rural district is a part, to be advisable and practicable.

Respectfully,

EDWARD C. TURNER,

Attorney General.