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1. HIGH SCHOOL—PUPIL RESIDING IN SCHOOL DISTRICT—NO HIGH SCHOOL—MAY ATTEND HIGH SCHOOL IN ANOTHER DISTRICT UNDER CONTRACT FOR SCHOOLING—WHERE NO CONTRACT OR DESIGNATED SCHOOL IS MORE THAN THREE MILES FROM RESIDENCE, PUPIL MAY CHOOSE HIGH SCHOOL.
2. BOARD OF EDUCATION MAY CONTRACT WITH ANOTHER DISTRICT TO ADMIT HIGH SCHOOL PUPILS WHERE DISTRICT HAS NO HIGH SCHOOL—WHEN HIGH SCHOOL PUPIL MAY CHOOSE HIGH SCHOOL—EXPENSE FOR TUITION—SECTION 4855-3 GC—SECTION 3327.04 RC—OAG 1951, OPINION 552, PAGE 292 MODIFIED.
3. NO OBLIGATION UNDER ANY CIRCUMSTANCES FOR BOARD OF EDUCATION TO FURNISH TRANSPORTATION FOR HIGH SCHOOL PUPILS—BOARD AUTHORIZED BY SECTION 4855 GC, SECTION 3327.01 RC TO FURNISH TRANSPORTATION TO ANY HIGH SCHOOL WHERE BOARD LIABLE BY CONTRACT OR OPERATION OF LAW FOR TUITION—WHERE NO SUCH LIABILITY, BOARD, DISTRICT OF RESIDENCE, NOT AUTHORIZED TO FURNISH TRANSPORTATION.

## SYLLABUS:

1. A pupil residing in a school district which has no high school may attend a high school in another district with which his district has entered into a contract for such schooling and if no such contract has been entered into, or the school designated is situated more than three miles from his residence, he may attend a high school of his own choosing.

2. The board of education of a school district having no high school may, under the provisions of Section 4855-3, General Code, Section 3327.04, R. C., contract with another district for admission and schooling of its high school pupils; and if no such contract is made, or if the high school so designated is more than three miles from the residence of certain pupils, they may attend any other high school of their choosing at the expense for tuition of the district of their residence. Opinion No. 552, Opinions of the Attorney General for 1951, page 292 modified.

3. A board of education is under no obligation to provide transportation for its high school pupils under any circumstances, but is authorized by Section 4855, General Code, Section 3327.01 R. C., to furnish transportation to any high school where such board is liable either by contract or by operation of law for the tuition of such pupils. The board of the district of residence is not authorized to furnish transportation to pupils who are attending a school where there is no such liability.

Columbus, Ohio, October 1, 1953

Hon. Morris O. Gibby, Prosecuting Attorney  
Harrison County, Cadiz, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"The following question has come up: In our county there is a local school district which has no high school of its own. Therefore, to furnish high school education to its resident pupils, it has made a contract with a high school in another county to furnish their education. The high school is at least six miles away from any of the resident pupils.

"Some of the pupils desire to attend another high school in the same vicinity as the high school designated by the board of education but the other high school is controlled by a different board of education than the one contracted with.

"Section 4855-3 of the General Code of Ohio should cover this situation in my opinion. However, it would be appreciated by this office if you would interpret Section 4855-3 according to the set of circumstances given above. Naturally your opinion would have to deal also with the transportation of the pupils. Your advice on this matter is requested."

From your statement of facts, without the presentation of definite questions, I can only infer that you desire my opinion on (a) the right of a pupil to attend a high school, other than the one which has been designated by the district of his residence, (b) the obligation of the board of residence to pay his tuition, and (c) the payment of the expense of transportation to the school to which he is assigned or which he chooses to attend.

1. There are several provisions of the statutes which authorize attendance of pupils at a school outside the district of residence. Section 4848-5 of the General Code provides in part:

*"Pursuant to law, a pupil may attend school outside his district of school residence, and for such pupil his board of education shall pay tuition, not more than that which shall be computed as follows: \* \* \**"  
(Emphasis added.)

Here follows a rather elaborate formula for computing tuition.

Section 4855-3, General Code, provides :

“The board of education of any city, exempted village or local school district may contract with the board of another district for the admission or transportation or both, of pupils into any school in such other district, on terms agreed upon by such boards within the limitations of law. Whenever a board of education not maintaining a high school enters into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils, the board of education making such agreement 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 ; provided, however, that in case no such agreement is entered into, the high school to be attended can be selected by the pupil holding an eighth grade diploma, and the tuition shall be paid by the board of education of the district of school residence.”

Section 4855-3b, General Code, provides as follows :

“When a pupil attends school, pursuant to the provisions of section 4855-3 of the General Code, in a district other than the district in which he is a school resident, tuition for such attendance shall be credited and paid in the manner provided in sections 4848-4 and 4848-5 of the General Code.

“When the board of education of a city, exempted village or local school district admits to the schools of its district any non-resident pupil for whose attendance tuition is not an obligation, as provided by law, of the board of education of the district of the pupil’s residence, such board of education shall collect tuition, for the attendance of such pupil, from the parents or guardian of the pupil and the amount of tuition collected shall be not more nor less than the amount computed in the manner prescribed by section 4848-5 of the General Code.

“If a board of education admits to the schools of its district any non-resident pupil for whose attendance tuition is not an obligation of the board of education of the district of the pupil’s residence, and fails to collect tuition, as required by the provisions of the second paragraph of this section, from the pupil’s parents or guardian, the attendance of such pupil shall be deemed to be unauthorized attendance. When a school district provides instruction for a non-resident pupil whose attendance is *unauthorized attendance*, as defined by this section, the membership of such pupil shall not be included in the membership figure used in determining the amount of state support to be paid to such district under the provisions of the foundation program act. The membership of such pupil *shall be credited*, however, *to the school district in which such pupil is a legal school resident.*”

(Emphasis added.)

While the above sections appear to contemplate a contract on the part of the board of the district of residence, yet it does appear that the pupil may attend school in a district other than that of his residence even in the absence of such contract or in disregard thereof.

2. As to the obligation on the part of the district of residence to pay tuition for a pupil attending school in a district other than that of his residence, I would call particular attention to the provision of Section 4855-3 supra, to the effect that where a board of education not maintaining a high school has entered into an agreement with another board, maintaining a high school, for the schooling of all its high school pupils, the board of the district of residence shall be exempt from the payment of tuition of pupils who go to other high schools, and live within three miles of the school designated in the agreement. The fact that a board which has made such contract is exempt from the payment of tuition of pupils who live within three miles of the school designated but who choose to attend some other high school, would give rise to the inference that as to pupils who live more than three miles from the school, the board shall be liable for their tuition at such other high school. I feel that that assumption is correct. It is true that in the last sentence of the section there is a provision that where no such agreement is entered into, the high school may be selected by the pupil and the tuition must be paid by the board of residence. That might seem to negative the first assumption, but it appears to me that in effect, the legislature has provided two conditions under which a pupil may attend some high school other than that contracted for, at the expense of the board of the district of his residence; otherwise there would be no provision in the law covering the case of the pupil who lives more than three miles from a designated school and who chooses to attend a more convenient high school. I am informed by the superintendent of public instruction that this has been the view of his department and the general practice for many years.

The justice underlying the above conclusion will, I think, be emphasized when we come to consider the question of the expense of transportation. Further light is thrown upon this question by a consideration of the second and third paragraphs of Section 4855-3b supra. There, it is provided that if the board of education admits to its schools a non-resident pupil whose tuition is not a legal obligation of the board of residence, such board so admitting the pupil must collect tuition from such

pupil or from his parents or guardian and failing to do so, such attendance will be what the law styles "unauthorized attendance," the penalty for which is, that the school admitting such pupil will not receive credit for such attendance under the provisions of the school foundation program act, Sections 4848-4 and 4848-5, General Code. The membership of such pupil shall be credited, however, to the school district in which such pupil is a legal school resident.

These sections were under discussion in Opinion No. 552, Opinions of the Attorney General for 1951, page 292, where it was held:

"1. The board of education of a school district is authorized to admit pupils resident of another district either pursuant to a contract made with the district of residence, pursuant to Section 4855-3, General Code, or by agreement with the parents of such children.

"2. If non-resident pupils are admitted to the schools of a district without a contract with the district of their residence, it is the duty of the boards receiving them to collect from the parents or guardian of such pupils tuition at the rates fixed in Section 4848-5, General Code, and a failure to collect such tuition will constitute unauthorized attendance as to such pupils as defined by Section 4855-3b, General Code."

The second branch of the syllabus of the opinion above quoted, which opinion did not involve the question which you have presented, does not appear to go quite as far in its interpretation of Section 4855-3 as does the conclusion which I have indicated, as to pupils living more than three miles from the school specified in the contract. The statute uses the words, "for whose attendance tuition is not an obligation," whereas the above syllabus uses the phrase, "without a contract." Because the obligation may arise as to such pupils, even where there is a contract, the opinion aforesaid should be modified by substituting the language of the statute.

It is therefore my conclusion that even though a school district having no high school has contracted with another district for high school tuition for its resident pupils, pupils living more than three miles from the school so designated, may attend another high school of their choosing at the expense of the district of residence.

3. As to the cost of transportation of pupils to a high school I direct your attention to Section 4855 of the General Code. In the first paragraph of this section provision is made making it obligatory on a

board of education, with certain reservations, to provide transportation to and from school for its elementary pupils who live more than three miles from the school to which they are assigned. The second paragraph of this section reads as follows:

“In all city and exempted village and local school districts, the board of education *may provide transportation* for resident high school pupils to the high school to which they are assigned.”  
(Emphasis added.)

It will be observed from the language of this provision that no obligation whatsoever is placed on the board of education to provide transportation for the high school pupils of their district under any circumstances. In Opinion No. 1789, Opinions of the Attorney General for 1947, page 203, it was held by one of my predecessors:

“A local board of education is under no legal obligation to furnish transportation for resident high school pupils attending high school in another district when the district of their residence maintains no high school of its own.”

This authority, however, is limited to those pupils who attend another high school, under circumstances where the board is obligated to pay for their tuition. However, Section 4855-3, General Code, which I have quoted, provides that the board of any district may contract with the board of another district for *admission or transportation or both*, of pupils to any school in such other district upon terms agreed upon “within the limitations of law.” The “limitations of law,” I believe relates to the provisions of Section 4848-4, as to the amount of tuition that may be charged by one district to another. I know of no limitation provided by law upon the cost of transportation, which manifestly is incapable of any specific formula. Accordingly, it would follow that the board of the district of residence would have a right to pay for transportation of pupils to a high school in another district whenever they have been assigned to such other district and whenever under the law such board is liable for the tuition of such pupils. It will be observed that the provision of Section 4855 supra, authorizing a board to provide transportation for its high school pupils, is limited to “the high school to which they are assigned.” “Assigned” in my opinion, should not be given too narrow a meaning. It should include those schools which the pupils have the right under the law to attend, at the expense for tuition of their own board as

well as those to which such board has by contract definitely assigned them. It is accordingly my opinion and you are advised :

1. A pupil residing in a school district which has no high school may attend a high school in another district with which his district has entered into a contract for such schooling, and if no such contract has been entered into or the school designated is situated more than three miles from his residence, he may attend a high school of his own choosing.

2. The board of education of a school district having no high school may, under the provisions of Section 4855-3, General Code, Section 3327.04, R. C., contract with another district for admission and schooling of its high school pupils ; and if no such contract is made or if the high school so designated is more than three miles from the residence of certain pupils, they may attend any other high school of their choosing at the expense for tuition of the district of their residence. Opinion No. 552, Opinions of the Attorney General for 1951, page 292 modified.

3. A board of education is under no obligation to provide transportation for its high school pupils under any circumstances, but is authorized by Section 4855, General Code, Section 3327.01, R. C., to furnish transportation to any high school where such board is liable either by contract or by operation of law for the tuition of such pupils. The board of the district of residence is not authorized to furnish transportation to pupils who are attending a school where there is no such liability.

Respectfully,

**C. WILLIAM O'NEILL**

Attorney General