

any way a check upon, the other; or when it is physically imp ossible for one person to discharge the duties of both."

With the principles above stated then, your first question is answered affirmatively and your second question is answered in the negative.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

984.

BOARD OF EDUCATION—MAY CONTRACT WITH BOARD OF ANOTHER DISTRICT FOR ADMISSION OF ITS PUPILS INTO ONE OR MORE SCHOOLS—TUITION—HOW FIXED—WHEN ATTENDANCE AND TUITION DETERMINED BY CONTRACT, PROVISIONS OF SECTIONS 7736 AND 7747 G. C. NOT APPLICABLE—WHERE AMOUNT OF TUITION VARIES OR WHERE CHANGE IS DESIRED IN CONTRACT AS TO TUITION—WHERE NO CONTRACT AS TO TUITION OF PUPILS ENTERED INTO, THEN PUPIL CAN SELECT HIGH SCHOOL.

1. *Under the provisions of section 7734 G. C. the board of education of a school district may lawfully contract with the board of education of another district or districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.*

2. *Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of section 7736 G. C. and section 7747 G. C. are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another board of education where a contract is had with more than one board.*

3. *Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contract. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school can be selected by the pupil holding a diploma.*

COLUMBUS, OHIO, February 3, 1920.

HON. LOUIS H. CAFELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the question as to whether the North College Hill board of education can pay an amount to the Cincinnati board of education that is equal to the amount now being paid to the Mt. Healthy board of education for the tutoring of high school pupils of the North College Hill school district. You indicate there are several of the pupils residing in the North College Hill village school district who desire to attend the Cincinnati high school rather than the high school at Mt. Healthy, and the board of education of the North College Hill school district desires to know whether they would be authorized to pay fifty dollars per pupil per school year to the Cincinnati

schools, leaving any additional amount to be paid by the parents of the pupils, the said fifty dollars being the amount that is now being paid to the board of education of the Mt. Healthy school district for the annual tuition of each high school pupil sent from the North College Hill school district.

In reply to our request for further information upon the question of the contract existing between the North College Hill school district and the Mt. Healthy school district, you advise as follows:

"\* \* \* The clerk of the North College Hill village school district advises that he has no record of a formal contract between the Mt. Healthy board and the North College Hill board. The only information that the clerk can furnish me with is a letter dated September 1, 1916, addressed to the clerk of the North College Hill board, advising said board that the tuition for high school pupils would be increased \$5.00 and that it would be necessary to enter into a new agreement. This letter is signed by the clerk of the Mt. Healthy board. Following this, to wit., on October 4, 1916, the North College Hill board of education passed the following resolution:

'BE IT RESOLVED by the board of education of the village of North College Hill in regular session this 4th day of October, 1916, that said board enter into contract with the board of education of the village of Mt. Healthy, Ohio, for the enrollment of all grades of said North College Hill school district at a charge of \$3.50 per month or part thereof per pupil attending the first and second grade and \$4.00 per month or part thereof per pupil attending the third and fourth year.'

I understand that no formal contract has ever actually been entered into, but that since October, 1916, the rates have increased at various times and the board is now paying \$50.00 per school year per pupil for the tutoring of said high school pupils at the Mt. Healthy school."

You indicate that no contract has ever been entered into between the North College Hill board of education and the Mt. Healthy board of education for the tutoring of high school pupils sent from the North College Hill district, but that in 1916 a resolution was passed that the board should enter into a contract upon the terms mentioned in such resolution, as above quoted. Seemingly this contract provided for in the resolution was never made and the resolution carries a series of figures as the amount of tuition to be paid, which has been greatly augmented since that time by various increases in the charge for tuition, which was followed by acquiescence by the North College Hill board of education and not by any contract.

The law contemplates that a board of education desiring to send pupils to another school district should make an agreement or contract with the board of education accepting such pupils, and if the rates are changed at various times the circumstance calls for a new contract and the old rates are discontinued. The board of education of the North College Hill school district should enter into a new contract with the Mt. Healthy board of education and any other board of education, if it cares to do so, authority for such action being found in section 7734 G. C., which reads as follows:

"The board of any district may contract with the board of another district for the admission of pupils into *any school* in such other district, *on terms agreed upon by such boards*. The expenses so incurred shall be paid out of the school funds of the district sending such pupils." (73 vs. 243.)

Section 7747 G. C., as amended in 107 O. L., page 625, reads in part as follows:

"The tuition of pupils who are eligible for admission to high school and who reside in village or rural districts in which no high school is maintained, may 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 month."

Section 7750 reads as follows:

"A board of education not having a high school may enter into an agreement *with one or more boards of education* maintaining such school for the schooling of all its high school pupils. 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, \* \* \*."

There is no conflict between section 7734 G. C., supra, and sections 7747 and 7750, just quoted, the former being a statute that is general in its terms and carrying with it the right of a board of education to contract with another board of education on tuition matters on such terms as may be agreed upon. Section 7734 G. C., was formerly section 4022, Revised Statutes, and was passed upon in the case of Board of Education vs. Board of Education, 50 O. S., 439, the first and third branches of the syllabus of which is as follows:

"1. The contract authorized by section 4022, Revised Statutes (now 7734 G. C.), for the admission of pupils from one district to the school of another, is an express contract to be made between the boards of education of the two districts.

3. Said section of the statute provides that the board of education may contract for the admission of such pupils, 'on such terms as may be agreed upon by such boards.' This evidently means an express agreement, evidenced by action of the board, and not a mere silent acquiescence."

Attention is also invited to opinion No. 742, appearing at page 1558, volume 2, Opinions of the Attorney General, 1915. In this opinion the Attorney-General says, in discussing section 7734, G. C., supra:

"This statute is general in its terms. \* \* \* It seems clear that where one or more pupils residing in a school district have the right to attend an elementary school or high school in another school district and the board of education of the district in which such pupil or pupils reside is compelled to pay the tuition for such attendance, the amount of such tuition must be determined in the manner prescribed by the provisions of section 7736 G. C., or by the provisions of section 7747 G. C., as amended. On the other hand, it seems equally clear that where such attendance and the tuition therefor are determined by the terms of a contract made between the boards of education of such districts, the provisions of said section 7736 G. C., and Section 7747 G. C., as amended, are not applicable.

I am of the opinion, therefore, \* \* \* that the board of education of a school district may lawfully contract with the board of education of another district for the admission of its pupils into one or more of the schools of such other districts, *and that the amount of tuition* for such attendance may be fixed by the terms of said contract and agreed upon by the parties thereto."

If the North College Hill board of education does not have in force at this time a contract with the Mt. Healthy board of education, a new contract covering the situation under the provisions of section 7734 should be entered into and, as indicated in both section 7734 and section 7750, such contracts can be with more than one board of education, and if the North College Hill board of education desired to send a portion of their pupils to the Mt. Healthy village school district and another portion to the Cincinnati city school district, or any other district, the board of education of the North College Hill district has ample authority to make the tuition contracts which it deems necessary and on terms to be agreed upon by the boards involved. The discretion of a board of education cannot be successfully attacked as long as such board, in its discretion, is acting within the bounds of the law, and doing those things for which the statutes provide. (See Ohio Law Bulletin, September 29, 1919, *Brannon vs. Board of Education*).

For its own protection a board of education in a district which does not maintain a high school should have a tuition contract or contracts with another board or boards of education maintaining a high school, because in the absence of any contract the high school pupil holding a diploma can select his own high school to be attended and the board would be liable for the entire tuition charge made by the foreign high school selected by the pupil. But if a board of education has contracted with another board of education for the tutoring of its high school pupils and the pupil does not attend the high school mentioned in the contract, but attends another high school with which no contract exists, then the pupil, while entitled to the same tuition privileges as other pupils, cannot create a liability on his resident board of education greater than the amount appearing in tuition contracts that are in force. Under the provisions of section 7734 a board of education can make an express contract with another board of education as it sees fit, the amount of tuition to be paid to be the amount agreed upon by the parties to the contract.

Based upon the statutes herein cited and the statement of facts given, it is therefore the opinion of the Attorney-General:

1. Under the provisions of section 7734, the board of education of a school district may lawfully contract with the board of education of another district or districts for the admission of its pupils into one or more of the schools of such other districts and the amount of tuition for attendance of pupils may be fixed by the terms of the contract agreed upon by the boards of education of the several districts.

2. Where the attendance and amount of tuition are determined by the terms of a contract made between the boards of education of such districts, the provisions of section 7736 G. C., and section 7747 G. C. are not applicable. There is no requirement in law that the amount of tuition paid to one foreign board of education need be exactly the same amount paid to another foreign board of education where a contract is had with more than one board.

3. Where a board of education enters into a contract or contracts with other boards of education for the tutoring of its pupils, and the schedule of pay for such tuition is later desired to be changed, a new contract or contracts should be prepared and agreed upon, for the reason that the limit of the liability resting upon a board of education to pay a pupil's tuition is the maximum amount named in any of the board's tuition contract. In cases where no agreement as to paying the tuition of pupils is entered into, the school to be attended by a pupil eligible to high school can be selected by the pupil holding a diploma.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*