

2920.

MILEAGE EXPENSE—USE OF PRIVATELY OWNED AUTOMOBILES—
BETWEEN HOME AND OFFICE OR SCHOOL—NO AUTHORITY FOR
BOARD OF EDUCATION TO ALLOW SUCH EXPENSE OF ITS
EMPLOYEES.

SYLLABUS:

A board of education may not pay mileage to its employes for the use of their privately-owned cars from their homes to the office or school or from the school or office to their homes.

COLUMBUS, OHIO, February 6, 1931.

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

GENTLEMEN:—Acknowledgment is hereby made of your recent request for my opinion, which reads as follows:

“We are enclosing herewith a letter from one of our examiners with reference to the payment of mileage to employes of the board of education of the.....City School District for the use of their privately-owned cars on official business.

We respectfully request you to furnish this department your written opinion upon the question contained in this letter. In this connection, we call your attention to Opinion No. 2753, to be found at page 1191 of the 1921 Reports of the Attorney General.”

The letter enclosed contains the following question:

“Has the.....Board of Education a legal right to pay mileage to a person using their personal automobile on board business, from their home to the office or to a school and from a school or office to home at night, provided, of course, the machine made other trips on official business during the day?”

The first branch of the syllabus of the opinion to which you refer in your letter (Opinions of the Attorney General for 1921, page 1191) reads as follows:

“Boards of education are impliedly authorized under the provisions of Sections 7620 and 4750, G. C., to expend and provide for the payment of automobile mileage to officers and employes using their private automobiles in the performance of official duties, when such transportation services are required by said board, and deemed necessary for the best interests of the schools under their jurisdiction.”

In *United States v. Shields*, 153 U. S., 88, the court said:

“Mileage allowed to public officials involves the idea that the travel is performed in the public service or in an official capacity.”

To say that in the ordinary course of events a person acts in an official capacity or performs a public service while going from his home to work or from work to his home would be to impose a strained construction on those terms as generally understood.

In the Opinion of the Attorney General above cited, it was stated:

“The board of education in question is authorized by law to pay * * * mileage for the use of privately-owned automobiles * * *, provided such uses are deemed requisite and necessary by the board of

education in the transaction of official business, and not such as may be contemplated privately in the transportation of the employes and officials designated, to or from their homes to their places of assigned duties, as a matter of personal advantage and convenience."

(Italics the writer's)

A consideration of the decisions relative to this question leads me to believe that the 1921 opinion above quoted is correct as a matter of law.

An ordinary contract of employment necessarily requires that the employe present himself at the place of employment in order to perform the work or duties imposed by the contract. To hold that the employment gives rise to an obligation on the part of the employer to transport the employe to and from work would be an unwarranted extension of the terms of the contract of employment.

In specific answer to your inquiry, it is my opinion that a board of education may not pay mileage to its employes for the use of their privately owned cars from their homes to the office or school or from the school or office to their homes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2921.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN WOOD COUNTY, OHIO.

COLUMBUS, OHIO, February 6, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

2922.

APPROVAL, AGREEMENT BETWEEN THE STATE OF OHIO AND THE PENNSYLVANIA RAILROAD COMPANY FOR RECONSTRUCTION OF UNDERPASS NEAR CALDWELL, NOBLE COUNTY, OHIO.

COLUMBUS, OHIO, February 6, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a proposed agreement between the State of Ohio and the Pennsylvania Railroad Company relative to the reconstruction of an underpass on S. H. No. 353, north of Caldwell, in Noble County, Ohio.

After examination it is my opinion that said proposed agreement is in proper legal form, and when executed by both parties, will constitute a binding contract. Said proposed agreement is being returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.