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1. TRANSPORTATION—BOARD OF EDUCATION—AUTHORITY TO CONTRACT FOR STIPULATED SUM TO FURNISH TRANSPORTATION FOR SCHOOL PUPILS—AUTHORITY TO FURNISH DRIVERS FOR OPERATION OF SCHOOL BUSES—SECTION 4855, G. C.
2. DRIVERS OF SCHOOL BUSES—FURNISHED BY CONTRACTOR—NOT EMPLOYED DIRECTLY BY BOARD OF EDUCATION—TRANSPORTATION OF SCHOOL PUPILS—REQUIRED TO GIVE BOND—NOT REQUIRED TO FURNISH CERTIFICATE AS TO AGE, MORAL CHARACTER AND PHYSICAL QUALIFICATIONS—SECTION 4855-7, G. C.

SYLLABUS:

1. A board of education has authority under Section 4855, General Code, to contract with a person, for a stipulated sum, to furnish transportation for school pupils and to furnish drivers for the operation of school buses.

2. Drivers of school buses who are not employed directly by the board of education but who are furnished by a contractor for the transportation of school pupils are by the terms of Section 4855-7, General Code, required to give bond but are not required to furnish a certificate as to their age, moral character and physical qualifications.

Columbus, Ohio, August 30, 1945.

Hon. Russell C. Price, Prosecuting Attorney
Upper Sandusky, Ohio

Dear Sir:

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

“Section 4855 of the General Code, provides that the board of education shall provide transportation for pupils to and from school who live more than two miles from school.

Section 4855-5 also provides that boards of education are authorized to purchase buses for the purpose of transporting pupils to and from school, among other things. Section 4855-6 provides for liability and property damage insurance covering each bus and all pupils transported, and Section 4855-7 provides for the qualification of drivers.

Nevada schools own their own buses and have in the past employed their own drivers, and they have asked me whether or

not they can contract with one for a stipulated sum, and he in turn to furnish the drivers for the buses and pay them as his employes.

If they may do so, must such drivers receive a certificate provided for by Section 4855-7, since the Attorney General rendered opinion 5811—1943—Section 4855-7 (formerly Section 7731-3) has been changed.”

Section 4855, General Code to which you refer reads in part, as follows:

“In all city, exempted village and local school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education *shall provide transportation* for such pupils to and from school except when in the judgment of such board of education, confirmed, in the case of a local school district, by the county board of education, or, in the case of a city or exempted village school district, by the judge of the probate court, that such transportation is unnecessary.” (Emphasis added.)

The above provisions were found in substantially identical terms in Section 7731 of the General Code, now repealed. It will be noted that by the terms of this statute the board of education “shall provide transportation for such pupils.” In construing said Section 7731, it has been held by this office that the board of education in the performance of that duty may either hire drivers to operate its own buses, or may hire men owning buses to operate them personally, or may contract with some person to furnish transportation, including the buses and drivers. In an opinion found in 1927 Opinions Attorney General, page 1472, it was held:

“Boards of education may in their discretion contract for the transportation of pupils for an entire school year or for a longer period if they deem it advisable, provided the general provisions of law with reference to the making of contracts by boards of education are complied with.”

The then Attorney General found authority for this holding in Section 7731 and, commenting upon that section and others relating to such transportation, said:

“Aside from these specific regulations, the statutes are silent as to the manner by which boards of education shall provide transportation for the pupils. The question of making contracts for such transportation and the terms thereof, or employing persons to effect the same is left entirely to the wisdom and judgment of the board.”

See also, 1928 Opinions Attorney General, p. 1733; 1934 Opinions Attorney General, p. 429.

As to the qualifications of drivers, it was formerly provided by Section 7731-3, General Code, as follows:

“When transportation is furnished in city, rural or village school districts *no one shall be employed as driver* of a school wagon or motor van who has not given satisfactory and sufficient bond and *who has not received a certificate* from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position. The local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for the employment; said board or superintendent shall choose the examining physician; and, said examination shall be the only one necessary for a driver to pass. Any certificate may be revoked by the authority granting the same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver’s contract shall be thereby terminated and rendered null and void.”
(Emphasis added.)

In the enactment of the new school code by the 95th General Assembly, the above Section 7731-3 was replaced by Section 4855-7, which reads as follows:

“No one shall be employed as driver of a school bus or motor van who has not given satisfactory and sufficient bond and who has not received *a certificate from the county board* of education of the county in which he is to be employed, *in case such person is employed by a school district under the supervision of the county board* of education, or *by the superintendent* of schools, *in case such person is employed by the board of education of a city or exempted village school district*, certifying that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position. The county board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for such employment. Any certificate may be revoked by the authority granting the same on proof that the holder thereof has been guilty of improper conduct or neglect of duty and the said driver’s contract shall be thereby terminated and rendered null and void.”

(Emphasis added.)

It will be noted that this new section makes a somewhat radical change in the law. Whereas Section 7731-3 provided that no one should be employed as driver of a school wagon or motor van who has not given satisfactory bond and "who has not received a certificate from the county board of education of the county *in which he is to be employed* or in a city district from the superintendent of schools" certifying as to his age, moral character and qualifications, the present statute appears to limit this requirement, at least as to the certificate, to a driver who is employed *by a school district*. This would seem to eliminate the driver who is employed by a contractor with whom a contract for transportation has been made. I can not find in the statute as it now stands, any language which would require a driver employed by such contractor to furnish such certificate.

The language of the statute, so far as the bond is concerned, appears to me to impose the obligation to give a bond upon every driver of a school bus or motor van, no matter by whom employed, but in reference to the certificate there appears to me to be no construction which can be placed on the present statute which would require the certificate, except where the driver is employed directly by the board of education.

In opinion No. 5811, rendered by my predecessor February 11, 1943, to which you refer in your communication, it was held as disclosed by the syllabus:

"The driver or person who actually operates a vehicle for the transportation of school children should give a sufficient and satisfactory bond as required by the provisions of Section 7731-3, General Code, whether or not the said driver is employed directly by the board of education or by a contractor of the board who has contracted to furnish transportation by means of one or more vehicles."

That opinion was rendered when Section 7731-3 *supra* was in force. The question then before the Attorney General was specifically as to the bond, but his discussion shows that he regarded the requirement as to both bond and certificate as being imperative, whether the driver was hired directly by the board or whether he was furnished by the contractor with whom the board had made a general contract for transportation. In the course of the opinion it was said:

"The language of the above statute seems clear in that it expressly prohibits the employment of anyone as the driver of a

conveyance used for the transportation of school children unless he gives a satisfactory and sufficient bond as well as being qualified in other respects as to certification by the proper authorities as to his age and physical and moral fitness as provided by the statute. No limitation or exception is contained in the statute with respect to who employs the driver, whether it be the board of education or a contractor of the board."

That opinion was undoubtedly correct in construing the statute as it then stood, but in view of the legislative change to which I have called attention, I am obliged to hold that the driver of a school bus who is not employed by the board of education but is furnished by the contractor for operating the school bus is required to give a bond for the faithful performance of his duties as driver but is not required to furnish a certificate as to his age, moral character and physical qualifications. It will be noted, however, that by the provisions of Section 4855-7, the county board of education or the superintendent of a city or exempted village school district, as the case may be, shall provide for a physical examination of each driver, to ascertain his physical fitness for such employment.

In practical operation, the change made by the statute does not appear to be serious inasmuch as the board of education could readily provide by contract that only drivers who are twenty-one years of age and who give evidence of good moral character could be employed, and the board could take such steps as it saw fit to satisfy itself that these requirements are complied with.

Specifically answering your questions it is my opinion :

1. A board of education has authority under Section 4855, General Code, to contract with a person, for a stipulated sum, to furnish transportation for school pupils and to furnish drivers for the operation of school buses.

2. Drivers of school buses who are not employed directly by the board of education but who are furnished by a contractor for the transportation of school pupils are by the terms of Section 4855-7, General Code, required to give bond but are not required to furnish a certificate as to their age, moral character and physical qualifications.

Respectfully,

HUGH S. JENKINS

Attorney General