

with sureties to the approval of the State Highway Director. * * *."

Sec. 1182-3. " * * * All bonds hereinbefore provided for * * shall be approved as to the sufficiency of the sureties by the Director, and as to legality and form by the Attorney General * * *."

Finding such bond in proper legal form in accordance with such sections, I hereby approve it as to legality and form and return it herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3994.

BOARD OF EDUCATION—MAY MODIFY CONTRACT WITH DRIVER OF
BUS FOR TRANSPORTATION OF PUPILS WHEN.

SYLLABUS:

Where a board of education enters into a contract with the driver of a school bus to drive that bus over a certain designated route for the transportation of school children, at a specified salary, and it later becomes necessary, in order to transport children who do not reside upon the original route provided for, to increase the mileage to be covered as provided for in the original contract, the board of education may lawfully modify the said contract and pay to the said driver an additional sum in consideration of the additional services to be rendered in the carrying out of said contract as so modified.

COLUMBUS, OHIO, March 4, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Can a board of education increase the salary of a person operating a school bus, after the contract has been entered into?"

The situation is this: An individual secured a contract for driving a school bus over a certain route. Later, the board of education changed the route, increasing the mileage, and also passed a resolution increasing the salary.

We would like to know whether this salary increase is legal."

The precise question involved in your inquiry has been passed upon by this office in two former opinions. In an opinion of the Attorney General which will be found in the reported Opinions of the Attorney General for 1930, page 1716, it was held as stated in the third branch of the syllabus:

"A board of education, after making a contract for the transportation of school pupils may later lawfully modify or change the contract, if changed conditions make such action necessary."

In support of this holding there is cited Donnelly on Public Contracts, Section 164, where it is stated:

"Public bodies, from the fact that they possess the power to contract, have also the power to modify or change contracts the same as natural persons in the absence of statutory restriction. * * If a public contract, because of changed circumstances or through some mistake, becomes oppressive it is within the power of the public body to modify it and allow additional compensation, or it may annul it."

In support of the text there are cited the cases of *Meech vs. Buffalo*, 29 N. Y., 198 and *Bean vs. Jay*, 23 Me., 117-121.

There are no statutory restrictions in this state upon the modification or changing of a contract made by a board of education for the transportation of pupils.

If the original contract in question provided, as you state, that the transportation contracted for was to be over a certain designated route, the contractor, of course, could not be required under the terms of this contract to provide transportation over any other route than the one expressly designated. Should it later become necessary to transport pupils over a different route, it obviously would be necessary for the board of education to either modify the original contract or make a new contract for this additional and different transportation. It, of course, would be proper to allow additional compensation if the additional transportation provided for by the modified contract or a new contract, involved additional labor or expense for the contractor.

In a later opinion of the Attorney General, which will be found in the reported Opinions of the Attorney General for 1932, page 112, it is held:

"Where a board of education enters into a contract for the transportation of pupils within the district, and later a bridge is removed by the State Highway Department along the route to be traveled in the transportation of said pupils thus necessitating a long detour in the carrying out of said contract, which facts were not foreseen at the time of originally entering into the contract, the board of education may lawfully modify the said contract and pay to the said contractor an additional sum in consideration of the additional service which must be rendered in the carrying out of said contract."

I am therefore of the opinion that the board of education in question may lawfully modify the contract to which you refer, changing the route to be traveled and inasmuch as this change increases the mileage, it is legal to allow additional compensation to the contractor or driver of the school bus for the additional services performed.

Respectfully,
JOHN W. BRICKER,
Attorney General.