

directors one or more members of the board of the contracting political subdivision.

2. The board of education of a school district containing less than two banks is prohibited by Section 4757, General Code, from entering into a depository contract with a bank of which one or more members of the board are stockholders and directors, since Section 7607, General Code, authorizing the creation of such depository, does not provide for competitive bidding.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1896.

SCHOOL DISTRICT, TUITION RATE PAYABLE FROM ONE SCHOOL DISTRICT TO ANOTHER WHERE PUPILS OF FORMER ATTEND SCHOOL IN LATTER DISTRICT—TUITION RATE MAY NOT EXCEED THAT FIXED BY SECTION 7736 AND 7747, G. C.

*SYLLABUS:*

1. *When two school districts contract with each other for the admission of pupils residing in one district to the schools of the other, and said contract fixes the rate of tuition for said pupils to be paid by the district of the pupils' residence to the district where they attend school, consideration should be given in the fixing of that rate to the limitations on the amount of tuition which may be charged as fixed by Sections 7736 and 7747, General Code.*

2. *Where such a contract provides for the payment of tuition in excess of the limitations fixed therefor by Sections 7736 and 7747, General Code, the contract is unauthorized and void, and if the children attend school in pursuance of the contract, the amount of tuition that should be paid is that fixed by Sections 7736 and 7747, General Code.*

COLUMBUS, OHIO, November 21, 1933.

HON. LEO M. WINGET, *Prosecuting Attorney, Sidney, Ohio.*

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

“The Board of Education of ‘A’ School District entered into a contract with the Board of Education of ‘B’ School District to pay the tuition for ten pupils residing in ‘A’ School District to attend school in ‘B’ School District, thereby increasing the aggregate days of attendance of ‘B’ School District some 1500 days in the school year.

Under Section 7600 of the General Code of Ohio, ‘B’ School District receives the money out of the ‘County Educational Equalization Fund’ which in part was derived through the increased aggregate days of attendance from ‘A’ School District.

Should ‘B’ School District reimburse ‘A’ School District for the money received out of the ‘County Educational Equalization Fund’ which was received upon the increase in the aggregate days of attendance of the pupils

of 'A' School District, or in calculating the aggregate days of attendance of 'A' and 'B' School Districts, should the aggregate days of attendance of the pupils of 'A' School District that are attending 'B' School District be deducted from the aggregate days of attendance of 'B' School District and added to 'A' School District?"

Contracts such as you mention in your inquiry, are authorized by Section 7734, General Code, 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 expense so incurred shall be paid out of the school funds of the district sending such pupils."

Section 7681, General Code, provides that the schools of each district shall be free to all youths who are children, wards or apprentices of actual residents of the district, and Section 7682, General Code, provides that:

"Each board of education may admit other persons upon such terms or upon the payment of such tuition *within the limitations of other sections of law* as it prescribes." (Italics the writer's.)

When a contract for the tuition is entered into between two school districts and the amount of tuition to be paid is thereby fixed, there is no authority for changing the contract and no power is reposed in any public officer or authority to change it unless it be done by mutual consent of the parties, provided of course, the amount so fixed is "within the limitation of other sections of law." If the amount of tuition to be paid as fixed by the contract, is not within the limitation of other sections of law, the contract is not such a contract as is authorized by the statute and will therefore be regarded as void.

The authority extended to boards of education by said Section 7734, General Code, is to contract for the admission of pupils of one district into the schools of another, upon the payment of a tuition rate which is less but not greater than that fixed by law for the payment of tuition where pupils of one district attend school in another district where a contract between the boards of education with respect thereto does not exist. The tuition rate which may be charged in those cases is fixed by Section 7736, General Code, for elementary school pupils, and by Section 7747, General Code, for high school pupils. This rule is fixed upon the basis of per capita cost of conducting the schools attended and each of the statutes prescribes the method of determining that per capita cost. In section 7736, General Code, with respect to elementary schools, it is provided:

"Such tuition shall be paid from either the tuition or the contingent fund, and the amount per capita must be ascertained by dividing the total expenses of conducting the elementary schools of the district attended \* \* \* by the net annual enrollment in the elementary schools of the district, \* \* \*"

Section 7747, General Code, relating to the charging of tuition for high school pupils, provides:

"No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, \* \* \* by the net annual enrollment \* \* \*"

In determining the "total expenses of conducting the elementary schools" of a district for the purpose of arriving at the per capita cost thereof, said Section 7736, General Code, provides:

"In computing such total expenses of conducting the elementary schools of such district the amount of the state common school fund and the proceeds of the state school levy retained in the county, apportioned to such district on account of teachers and other persons employed in such elementary schools, the amount of said state common school fund apportioned thereto on account of transportation of pupils, and the amount of such funds apportioned thereto on account of aggregate days of attendance of pupils shall be deducted from the gross expenses of conducting such schools.  
\* \* \*"

To determine the total expenses of conducting high schools for the purpose of computing the per capita cost, Section 7747, General Code, provides:

"In computing such total expenses of conducting such high school the amount of the state school levy retained in the county apportioned to such district on account of teachers and other persons employed in such high school, the amount of said common school fund apportioned thereto on account of transportation of high school pupils and the amount of such funds apportioned thereto on account of aggregate days of attendance of high school pupils shall be deducted from the gross expenses of conducting such school.  
\* \* \*"

If the two districts mentioned in your inquiry, when making the contract for the payment of tuition by "A" District to "B" District for ten pupils residing in "A" District and attending school in "B" District took into consideration the fact that the amount of that tuition was necessarily limited by the terms of Sections 7736 and 7747, General Code, and fixed the rate of tuition accordingly, and that rate was, in fact, within the limit allowed, the terms of the contract will prevail and the amount fixed by the contract is the amount which "A" District should pay to "B" District. If the rate fixed by the contract was not "within the limitations of other sections of law," that is, if it was greater than the tuition fixed by Sections 7736 and 7747, General Code, then, in my opinion, the contract is unauthorized and void and the tuition that should be paid is that fixed by said Sections 7736 and 7747, General Code.

It is apparent that the legislature intended that when one school district pays tuition to another, credit should be given to the paying district for its proper share of the county educational equalization fund provided for by Section 7575, General Code, and distributed in accordance with Section 7600, General Code, and if the law is followed and the tuition rate fixed in accordance with Sections 7736 and 7747, General Code, there is no injustice suffered by the paying district on account of the fact that the receiving district gets the benefit of the distribution of the county educational equalization fund on account of aggregate days of attendance of pupils.

Specifically answering your question I am of the opinion that there is no authority for, and no occasion for "B" District reimbursing "A" District for money received by the said "B" District from the county educational equalization fund on account of the aggregate days of attendance of pupils from "A" District who are attending school in "B" District.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1897.

CORPORATION—AMENDMENT OF ARTICLES OF CORPORATION FOR PROFIT TO ONE OF NOT FOR PROFIT—WHAT AMENDMENT SHALL INCLUDE.

*SYLLABUS:*

1. *Where the purpose or purposes of a corporation, purporting to be one for profit, whether they be the original purpose or purposes or as changed by amendment, clearly set forth a purpose or purposes which are not only evidently that of a corporation not for profit, but which preclude the exercise of any purpose for profit and which corporation has acted solely as a corporation not for profit, its articles may be amended and may set forth that it is, in fact, a corporation not for profit.*

2. *When such an amendment is sought to be made, the amendment should also provide for the elimination of all provisions in the articles relating to capital stock and the issuance of shares of the corporation, and all outstanding shares should first be surrendered to the company and cancelled.*

COLUMBUS, OHIO, November 22, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads in part as follows:

"Your opinion is respectfully requested, first, as to whether or not a corporation organized for profit, whose articles contain a purpose which clearly sets forth a purpose of a corporation not for profit but contains no statement which would preclude the corporation from making a profit, and whose shareholders do not by agreement waive their rights to receive dividends, and whose shareholders do not agree that their shares should revert to the company upon their death, may by amendment change the corporation from one for profit to one not for profit. Second, whether the fact that the limitation contained in section 8623-14 as enacted in 112 O. L., upon which section earlier opinion was based, which stated that no amendment shall be filed substantially changing the purpose or purposes for which a corporation were formed is missing in section 8623-14 as is now in effect, would have any bearing on your opinion.