of proceeding to enforce collection as to that part of the tax which the company is willing to pay. Since the company refuses to pay the amount deducted, it is undoubtedly your duty to place the claim for this amount in course of collection in the ordinary manner of claims of this character.

The situation which you present is similar to that before me in Opinion No. 2315, dated July 3, 1928, and addressed to the Honorable Herman R. Witter, Director of Industrial Relations. In that opinion I held that the Industrial Commission could properly accept a check in payment of the undisputed portion of a claim upon a bond of a former employe, although the check recited that it was in full payment of all claims, where an accompanying letter, signed by the same official who signed the check, expressly stated that the acceptance of the check would be without prejudice to the rights of either party with reference to other alleged losses. I enclose herewith a copy of my former opinion for your information.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that you have the authority to accept the payment of a lesser amount than that due from a dealer in motor vehicle fuel for the tax upon such fuel sold during the preceding calendar month where such payment is without predjudice to the right of the State to proceed to collect the balance due.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2880.

TRANSPORTATION OF PUPILS TO HIGH SCHOOL—AUTHORITY OF COUNTY BOARD OF EDUCATION DISCUSSED.

SYLLABUS:

A county board of education cannot lawfully pay parents, from the general fund of the county, for transporting their children to a high school, and have the same charged to the local district by authority of Section 7610-1, General Code, unless the county board had, prior to the furnishing of said transportation, deemed and declared the transportation to be advisable and practicable, or unless the local board desires to pay for such transportation and is unable on account of lack of funds to do so.

COLUMBUS, OHIO, November 14, 1928.

HON FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, which reads as follows:

> "No provision having been made by the Board of Education of Rose Township, Carroll County, for maintaining a high school within four miles of the residence of J. W. S., or providing room and board or transportation of the children of J. W. S. to any legally constituted high school, the pupils were transported by parents during the years of 1926-27 and 1927-28.
>
> Mr. S. now seeks to collect from the Rose Township Board of Education $178.25 for such services. The board has refused and failed to pay the amount above demanded and Mr. S. has now made demand upon the County Board of Education for this amount.

Can the County Board of Education legally vote the funds of Rose Township Rural Board of Education for this transportation and pay the amount to the claimant as provided in Section 7610, G. C., provided the local board fails to provide transportation or pay for same?

During the time in question Rose Township Board of Education was not sharing in the state equalization fund, and have no money appropriated for the payment of high school transportation."

Section 7749–1, General Code, reads as follows:

"The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation, except as follows: If the transportation of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

Section 7610–1, General Code, reads as follows:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, * * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. * * *

All salaries and other money so paid by the county board of education, or by the probate court, or by the court of common pleas, shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education, or by the judge of the probate court, or by the judge of the court of common pleas, as the case may be, but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes."

If the Board of Education of Rose Township School District, during the school years of 1926–27 and 1927–28, was under a legal duty to provide transportation for the pupils in question and failed to do so and the parents transported the pupils, there would exist a lawful claim against the board in favor of the parents for the reasonable value of such transportation. This was held under a similar former law in the case of *Sommers* vs. *Putnam County Board of Education, et al.*, 113 O. S. 177, the 4th branch of the syllabus of which case reads as follows:

"A parent who resides more than four miles from any high school in a rural school district who is compelled to transport his children of compulsory school age who have finished the ordinary grade school curriculum to a high school more than four miles from his residence by reason of the refusal of the local board of education and the county board of education either to provide work in high school branches at some school within four miles of the children's residence, or to transport the children to and from a high school, may recover in an action at law for such transportation."

If a valid claim for transportation exists against the board and the board fails to pay it, the County Board of Education should, by virtue of the provisions of Section 7610-1, supra, pay the claim from the general fund in the county treasury and charge the same to the local district. The question to be determined, therefore, in the present case, is whether or not Rose Township Rural School District was, at the time the transportation was furnished, legally bound to provide such transportation.

It will be observed from the provisions of Section 7749—1, supra, that a District Board of Education, except as provided in Section 7749, General Code, which has to do with districts in which the elementary schools are centralized and transportation furnished thereto, may provide transportation to a high school either within or without the district, if it chooses to do so, but in no case is it required to do so unless the County Board of Education deems and declares such transportation to be advisable and practicable.

In Opinion No. 2463, rendered under date of August 20, 1928, addressed to the Prosecuting Attorney of Morgan County, it was held that the declaration of a County Board of Education, deeming it advisable and practicable for a District Board of Education to furnish transportation for high school pupils, must be made before the transportation is furnished in order to fix an obligation on the board to furnish it, because the local board has a right to determine, if required to furnish transportation at all, whether it will furnish the transportation itself or whether it will permit the pupils to be transported by the parents and pay them for such transportation.

This reasoning is supported by the holding of the Supreme Court in the case of *Board of Education of Swan Township* vs. *Cox*, 117 O. S. 406, 159 N. E. 479. In that case the question arose as to the right of the parent to recover for transporting his children to a high school during the school year 1924-25, prior to the repeal of former Section 7764-1, General Code. The syllabus of that case reads as follows:

> "1. By virtue of Section 7764-1, General Code, enacted in 1921, and prior to its repeal July 10, 1925, a duty devolved upon either the local board of education or the county board of education to provide work in high school branches at some school within four miles of the residence of children of compulsory school age who have finished the ordinary grade school curriculum, if such children live more than four miles from a high school, or such boards may at their election provide transportation for such children to a high school, or provide board and lodging for such children near a high school.
>
> 2. In order that such boards of education may have a choice of means of discharging the duties imposed upon them, it is the duty of such children or their parents to communicate to such boards the fact of readiness for high school work and the further fact of residence more than four miles from a high school, in order that the board may have an opportunity to take official action in exercising such choice of means and to make provision therefor."

In the course of the opinion Chief Justice Marshall, in referring to former Section 7764-1, General Code, said:

> "By former decisions of this court interpreting this and other related sections it is declared that a board of education has a choice of means, viz., that the board may either provide the high school instruction within a distance of four miles from the residence, or provide transportation, or provide board and lodging to the pupils near the high school. *State ex rel. Masters* vs. *Beamer*, 109 O. S. 133; *Sommers* vs. *Putnam*, County Board of Education, 113 O. S. 177. The statute does not in terms require that any formal request or demand be made upon the board but it must be apparent that there could be no opportunity to the school board to exercise a choice of means unless the matter were brought to the attention of the board by request or demand."

Likewise, under circumstances such as we have here under consideration, if a county board of education deems and declares transportation of high school pupils to be advisable and practicable in a district of the county school district, and thus imposes upon the district board the duty of furnishing that transportation, the local board should have the opportunity of exercising its choice of means of furnishing that transportation, and for that reason the determination of the county board must be made before the duty attaches.

In said Opinion No. 2463, supra, it was held:

"1. A county board of education is without authority to order payment of the reasonable value of the cost of transportation of pupils to high school where no obligation rested on the local board of education to provide such transportation at the time the transportation was furnished.

2. No obligation rests on a local board of education in districts other than rural districts, which maintain high schools and in which the elementary schools are centralized and the transportation of pupils provided for, to provide transportation for resident pupils who attend high school unless the local board chooses to furnish such transportation, or unless the county board of education deems and declares such transportation to be advisable and practicable.

3. A county board of education may not pass a resolution deeming and declaring transportation of high school pupils in a district of the county district to be practicable and advisable, obligating the local district to pay parents for transporting their own children to high school during a period prior to the date of said resolution.

4. The resolution of the county board of education deeming and declaring the transportation of high school pupils in a district of the county school district to be advisable and practicable is not and cannot be so framed as to make the same retroactive."

Since the repeal of Section 7764-1, General Code, boards of education are not required to provide work in high school branches at some school within four miles of the residence of each child entitled thereto or furnish transportation to such a school unless required to do so by the county board of education in districts other than those in which the elementary schools have been centralized and transportation furnished thereto, but if a high school is maintained by the board, it must either furnish transportation to those pupils who live more than four miles therefrom or pay the tuition of pupils who attend a nearer high school.

You do not state in your communication whether the Board of Education of Rose Township Rural School District maintains a high school or not, or whether the county board of education had deemed and declared high school transportation in the said district to be advisable and practicable prior to the time the transportation was furnished for which it is now sought to receive compensation. In any case, I have no doubt that the local board might even at this time, if it saw fit, pay for the transportation, and if it should determine that the transportation should be paid for and did not have the means of meeting the claim at this time, the county board of education could lawfully pay the claim from the county treasury and charge the same to the local district, but there could not at this time be imposed upon the local board such an obligation for said transportation as would merit the county board paying for the same from the county treasury and charging it back to the local board, unless the county board had, prior to the furnishing of the transportation, deemed and declared such transportation to be advisable and practicable.

In specific answer to your question, therefore, I am of the opinion that unless the County Board of Carroll County School District, prior to the furnishing of the transportation for which it is now sought to collect, had deemed and declared such transportation to be advisable and practicable, or unless the county board at this time desires to pay said claim, the county board can not lawfully pay the same from the county treasury and charge it back to the local district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2881.

APPROVAL, BONDS OF HIGHLAND COUNTY—$14,041.73.

COLUMBUS, OHIO, November 14, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2882.

APPROVAL, BONDS OF THE VILLAGE OF GROVER, JEFFERSON COUNTY—$43,564.60.

COLUMBUS, OHIO, November 14, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2883.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN WOOD COUNTY.

COLUMBUS, OHIO, November 14, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*