

2293-27, General Code, the commissioners must, before selling any bonds or notes of the county, offer the same at par and accrued interest to the trustees of the sinking fund.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3232.

BOARD OF EDUCATION—AUTHORIZED TO FIX A RATE FOR HIGH SCHOOL TUITION UNDER SECTION 7682, GENERAL CODE, PROVIDED SUCH RATE IS NOT MORE THAN THE MAXIMUM FIXED UNDER SECTION 7747, GENERAL CODE.

SYLLABUS:

Where persons, other than those described in Section 7681, General Code, are admitted to the high schools of a district, the board of education may in its discretion fix the amount of tuition which shall be paid for their attendance in such schools, which amount shall not be more than the maximum fixed in accordance with the rule stated in Section 7747, General Code.

COLUMBUS, OHIO, May 19, 1931.

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

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

“When the board of education of a school district determines the amount to be charged for tuition under the provisions of section 7747 G. C., which section seems to apply where a board of education is to pay such tuition, may the board under the provisions of section 7682 G. C., fix the rate which is to be paid by the pupil himself or his parents different from the rate fixed under section 7747 of the General Code? In other words, if the board fixes a rate of \$120.00 per school year under section 7747 G. C., may such board legally fix a rate of \$60.00 under section 7682 of the General Code?”

Section 7681, General Code, provides in substance that the schools of each district shall be free to all youth between six and twenty-one years of age who are children, wards or apprentices of actual residents of the district. It also provides that inmates of the proper age of certain semi-public and district children's homes shall be admitted upon certain conditions, and that the inmates of private children's homes or orphan asylums located in the district may be admitted with or without the payment of tuition as may be agreed upon.

Section 7682, General Code, provides as follows:

“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. Notwithstanding the provisions of section 7603, General Code, money received for tuition shall in all cases upon its receipt be placed in the tuition fund.”

Said Section 7682, General Code, was formerly a part of Section 4013, Revised Statutes, as was also Section 7681, General Code. Said Section 4013, Revised Statutes, after setting forth who were to be admitted to the public schools in each district free of charge, provides that other persons might be admitted to the schools by the board of education of any district "upon such terms and the payment of such tuition as it prescribes".

This latter provision was codified in 1910 as a separate section, to-wit:— Section 7682, General Code, and was amended in 1921 to read as it now does.

It will be observed that by this amendment there was a limitation placed on the board's determination of the amount of tuition to be paid, by the insertion of the words "within the limitation of other sections of law".

Apparently the terms of Section 7682, *supra*, are applicable whether tuition for attendance in a high school or grade school is involved. Inasmuch as you refer to Section 7747, General Code, in your inquiry, I take it that the tuition in question grows out of attendance in a high school.

The only limitation on the amount of tuition to be charged by the board of education in a high school is that contained in Section 7747, General Code, which provides, *inter alia*:

"* * * No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repair, said total expenses to include interest charges not exceeding five percent per annum and depreciation charges not exceeding five percent per annum, based upon the actual value of all property used in conducting such high school, by the net annual enrollment in the high school. * * *"

The provision of Section 7747, General Code, above quoted, has been a part of the statute in practically the same terms since 1914, although the statute has been amended in some respects several times since 1914.

It will be observed that this statute does not fix the amount of tuition that must be charged in any case, but simply limits the amount to be charged, the language being: * "No more shall be charged, etc."

The plain language of Section 7682, General Code, clearly gives to each board of education the power to prescribe the terms upon which persons other than those described in Section 7681, General Code, may be admitted to the schools of the district, and to fix the amount of tuition that shall be paid for them, limited only by the terms of Section 7747, General Code, above quoted, which provision purports only to fix the maximum charge that may be made. The language is clear and needs no interpretation.

I am, therefore, of the opinion that where persons, other than those described in Section 7681, General Code, are admitted to the high schools of a district, the board of education may in its discretion fix the amount of tuition which shall be paid for their attendance in such schools, which amount shall not be more than the maximum fixed in accordance with the rule stated in Section 7747, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.