

same fees as are allowed by law to justices of the peace for like services.'

General Code Section 1746-2 says that a justice shall be allowed twenty-five cents per hundred words for writing depositions and ten cents for administering an oath.

There is apparently a conflict in these sections as to the proper charge to be made by a notary and I would appreciate your opinion on the same."

You have quoted the pertinent portions of Sections 11545 and 127, General Code. The pertinent provisions of Section 1746-2 read as follows:

"For miscellaneous services justices of the peace shall charge and collect from the persons for whom the services are rendered the following fees, and no more: \* \* \* taking depositions and certifying to same, twenty-five cents per hundred words; swearing witnesses, each, ten cents; \* \* \*."

From an examination of the above statutes, it is clear that Section 127, General Code, enacted in 85 O. L. 87, is in conflict with the provisions of Section 11545, General Code, enacted in 51 O. L. 57. According to the well known rule of statutory construction that when legislation upon the same subject is in conflict, the later enactment will prevail, it follows that the provisions of Section 127, General Code, which allow fees charged by notaries for taking depositions to be governed by the fees allowed justices of the peace for taking and certifying depositions, will control as to such notary public fees over the provisions of Section 11545, which sets a fixed amount for officers taking depositions and swearing witnesses.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that pursuant to Section 127, General Code, a notary public should charge for taking depositions and swearing witnesses the fees set forth in Section 1746-2, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4066.

SCHOOLS—TRANSPORTATION OF CRIPPLED AND NORMAL CHILDREN—COMPULSORY SCHOOL AGE—BOARD OF EDUCATION MAY FURNISH TEXTBOOKS AND PERSONAL NECESSITIES TO CHILDREN OF COMPULSORY SCHOOL AGE.

*SYLLABUS:*

1. *When an elementary school pupil resides more than two miles from the school to which it is assigned, transportation for such child must be furnished by the board of education of the school district where the child resides, or the parents or persons in charge of such child paid for transporting it.*

2. *A child who is so crippled as to be unable to walk to the school to which it is assigned, must have transportation provided for it.*

3. *When a child who is not so crippled as to be unable to walk to school is assigned to a high school outside the district of his residence, by authority of Section 7764, General Code, which school is more than four miles from his residence, transportation to said school must be furnished for him, else he is not required to attend the said school, but may choose to attend another high school, and the board of education of the district of his residence will be required to pay his tuition in the high school which he chooses to attend.*

4. *By "school age" is meant that age fixed by Section 7781, General Code, as the age of youths for whom the public schools of the state shall be free, to wit: those youths between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district.*

5. *For the purpose of providing for compulsory education, the law requires that children between six and eighteen years of age, must attend school for a specified period each year, unless excused for cause as provided by law. This is known as the "compulsory school age."*

6. *The laws relating to the transportation of pupils make no distinction between those pupils who are of school age and those who are of compulsory school age. In any case where the law requires that pupils be transported to school, the advantages of such transportation accrue to the benefit of all pupils attending school who are between six and twenty-one years of age.*

7. *A local board of education may furnish textbooks free of charge for all pupils attending the schools but is not required to do so unless circumstances are such as to require the furnishing of the said textbooks in accordance with the provisions of Section 7777, General Code.*

8. *The duty of a local board of education to furnish textbooks and necessary personal necessities for children attending school is never mandatory except in cases where an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves. This duty arises in those instances only, that come strictly within the terms of Section 7777 of the General Code. It is never mandatory, except in a case where a child is "compelled to attend school," in other words when the child is within compulsory school age. See Opinions of the Attorney General for 1929, page 288.*

COLUMBUS, OHIO, February 18, 1932.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

1. In case a child has been assigned to an elementary school in a rural school district from which school the child lives more than two miles, and the board of education of the district, by resolution, finds that it is unnecessary and impracticable to provide transportation for such child, and the county board of education confirms the view of the local board of education, is it incumbent upon, and required, under the law, for the local board to agree to compensate the parent of the child for transporting the child to school? Section 7731-4, General Code, seems to imply that the local board must agree to pay the parent in case transportation is

deemed impracticable; but will the local board be relieved if it passes resolutions deeming it impracticable where the county board of education sustains its view?

2. In case a rural board of education which maintains a second grade high school, has assigned a nineteen-year-old crippled girl to a first-grade high school in the fourth year outside the district, which high school is more than four miles from the residence of the girl, is the board required to furnish transportation for the girl?

3. Is there any distinction between school age and compulsory school age? If so, is it incumbent upon a local board of education to furnish transportation to one who is of school age and not of compulsory school age?

4. Is it incumbent upon the local board of education to furnish books and necessary clothing to a pupil who is of school age but above compulsory school age?

5. Section 7681, General Code, provides that children may be admitted to schools free, between the ages of six and twenty-one years. Section 7764, General Code, provides that a child, in his attendance at school, shall be subject to assignment outside the district of his residence, provided his tuition is paid and his transportation is furnished in case he lives more than four miles if assigned to a high school. Does this section of law benefit all children of school age, which I assume is twenty-one years, or is it for the benefit of only those who are of compulsory school age?"

Your questions will be considered in the order asked.

First: This question is answered by Opinion 1042, addressed to the Prosecuting Attorney of Morgan County, under date of October 17, 1929. This opinion may be found in the published Opinions of the Attorney General for 1929, at page 1584. In this opinion, the pertinent statutes relating to this question are referred to and discussed, and it is there held: "Transportation to and from school must be furnished for elementary school pupils who reside more than two miles from the school to which they are assigned, or the parents or persons in charge of said pupils paid for transporting them."

Second: If the girl in question is so crippled that she is unable to walk to school, the question of whether or not transportation must be furnished for her is controlled by Section 7755-3 of the General Code, which provides:

"In case a child is so crippled that he is unable to walk to the school to which he is assigned the board of education of the district in which he resides shall provide for his transportation to such school. This section shall apply whether there is a special class for crippled children to which he is assigned or not. In case of dispute whether the child is able to walk to school or not, the district health commissioner shall be judge of such ability."

It will be observed that this statute makes no distinction between children attending an elementary school and those attending a high school and it appears clear, therefore, that if the girl to which you refer, is so crippled that she is unable to walk to the school to which she is assigned, transportation must be furnished for her. If, however, the district health commissioner should find that she is able to walk to school, the question of her transportation is controlled by

Section 7764 of the General Code. It will be observed that this section provides that a child, in his attendance at school, is subject to assignment to the class in the elementary school, high school or other school suited to his age and state of advancement and vocational interest within or without the district, and that if the school be a high school, and more than four miles from the residence of the pupil, transportation shall be furnished. It will also be observed that the statute contains this clause: "The transportation of high school pupils under this section shall be in accordance with the provisions of 7749-1." The aforesaid sentence was incorporated in the statute by amendment, in 1925 (111 O. L., 125). Section 7749-1, General Code, was enacted at the same session of the legislature that Section 7764, General Code, was amended, as noted above. Said Section 7749-1, as enacted in 1925, provides in substance, that in no case, except where the elementary schools of a rural school district are centralized, and transportation of pupils is provided, shall a board of education be required to provide high school transportation unless such high school transportation is deemed and declared by the county board of education advisable or practicable, in which case the district board shall furnish such transportation.

Upon consideration of the provisions of Section 7764, General Code, as amended in 1925, together with the provisions of Section 7749-1, General Code, it is clear that a local board of education is not required, under any circumstances, to provide high school transportation for a child which is assigned to a school outside the district, unless the county board of education deems and declares such transportation to be advisable and practicable. However, if transportation is not provided, the child is not required to attend the school to which it has been assigned if it is more than four miles from his residence and may attend some other high school and have its tuition paid. See Opinions of the Attorney General for 1928, pages 1925, 1955 and 2613; for 1929, page 1828; and for 1930, page 1464.

Third: The term "compulsory school age" is defined by Section 7762, General Code, which provides:

"A child between six and eighteen years of age is 'of compulsory school age' for the purpose of this chapter; but the board of education of any district may by resolution raise the minimum compulsory school age of all children residing in the district to seven, subject to subsequent modification to six; and the compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of education of the district in which he resides adopted under section seven thousand six hundred eighty-one of the General Code, next following his arrival at the minimum age prescribed hereby or hereunder."

The "chapter" referred to in the above statute, is the chapter of the Code relating to compulsory education.

"School age" is that age fixed by Section 7681, General Code, for pupils to whom the public schools are open. It is there provided that the schools of each district shall be free to all the youth "between six and twenty-one years of age" who are children, wards or apprentices of actual residents of the district. The age there fixed, that is between six and twenty-one years, is known as the "school age."

The statutes relating to the transportation of children make no distinction between those of school age and those of compulsory school age. Most of these

statutes, if not all of them, speak of the children attending school, which might be any children within school age. Where, under the law, transportation of school pupils is required, the provisions with reference thereto apply to all pupils attending school who have a right to so attend free of charge, in accordance with the provisions of Section 7681, General Code.

Fourth: The only instance in which local boards of education are required to furnish school books and necessary clothing for pupils who attend school is when such action is required by force of Section 7777, General Code. Textbooks may be furnished free of charge, by authority of Section 7739, General Code, but the terms of this statute, it will be observed, are permissive and not mandatory. That is to say, in so far as Section 7739, General Code, is concerned, a board of education is not required to furnish textbooks for pupils free of charge but may do so if thought advisable. Section 7777, General Code, requires a board of education to furnish free of charge textbooks and other personal necessities for children attending school, when it appears that the attendance officer has been satisfied that "a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves."

It will be observed that this statute speaks of those children who are "compelled to attend school." It is only in those cases where children who are "compelled to attend school" are involved that any authority exists making it compulsory for a board of education to furnish textbooks and other personal necessities so as to enable the child to attend school. The answer to your question is therefore, that the provisions spoken of apply only to those who are within the compulsory school age.

Fifth: The matter involved in this question has been discussed in the consideration of your third question. Section 7764, General Code, makes no distinction between children of compulsory school age and those of school age. The provisions of the statute, in my opinion, are applicable to all children who may be attending school and who are subject to assignment by the principal or superintendent of schools. These children may or may not be beyond compulsory school age.

I am therefore of the opinion, in specific answer to your questions:

1. When an elementary school pupil resides more than two miles from the school to which it is assigned, transportation for such child must be furnished by the board of education of the school district where the child resides, or the parents or person in charge of such child paid for transporting it.

2. A child who is so crippled as to be unable to walk to the school to which it is assigned, must have transportation provided for it.

When a child who is not so crippled as to be unable to walk to school is assigned to a high school outside the district of his residence, by authority of Section 7764, General Code, which school is more than four miles from his residence, transportation to said school must be furnished for him, else he is not required to attend the said school, but may choose to attend another high school, and the board of education of the district of his residence will be required to pay his tuition in the high school which he chooses to attend.

3. By "school age" is meant that age fixed by Section 7781, General Code, as the age of youths for whom the public schools of the state shall be free, to wit: those youths between six and twenty-one years of age, who are children, wards or apprentices of actual residents of the district.

For the purpose of providing for compulsory education, the law requires that

children between six and eighteen years of age, must attend school for a specified period each year, unless excused for cause as provided by law. This is known as the "compulsory school age."

The laws relating to the transportation of pupils make no distinction between those pupils who are of school age and those who are of compulsory school age. In any case where the law requires that pupils be transported to school, the advantages of such transportation accrue to the benefit of all pupils attending school who are between six and twenty-one years of age.

4. A local board of education may furnish textbooks free of charge for all pupils attending the schools but are not required to do so unless circumstances are such as to require the furnishing of the said textbooks in accordance with the provisions of Section 7777, General Code.

The duty of a local board of education to furnish textbooks and necessary personal necessities for children attending school is never mandatory except in cases where an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves. This duty arises in those instances only, that come strictly within the terms of Section 7777 of the General Code. It is never mandatory, except in a case where a child is "compelled to attend school," in other words when the child is within compulsory school age. See Opinions of the Attorney General for 1929, page 288.

5. This question has already been answered in question number three.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4067.

CANDIDATE—ELECTION LAW—NAME MAY APPEAR ON BALLOT FOR  
OFFICE OF MEMBER OF VILLAGE BOARD OF EDUCATION AND  
COUNTY BOARD OF EDUCATION.

*SYLLABUS:*

*Since the language of Section 4728, General Code, specifically provides that the offices of member of the village board of education and member of the county board of education may be held by the same person, the name of a candidate may appear upon the ballot submitted to the electors at an election for both offices.*

COLUMBUS, OHIO, February 18, 1932.

HON. WINSTON W. HILL, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—Your request for opinion is:

"Since the office of a member of a village board of education and the office of a member of a county board of education are compatible, can a person's name appear on the ballot as a candidate for both offices?"

Prior to the enactment of the Primary Election Law, the Court of Common Pleas of Fayette County held that the name of a person nominated by one politi-