

2746.

APPROVAL, BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE SCHOOL  
DISTRICT, CUYAHOGA COUNTY—\$10,000.00.

COLUMBUS, OHIO, October 17, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2747.

BOARD OF EDUCATION—CANNOT COLLECT FROM ANOTHER BOARD  
FOR TUITION OF ELEMENTARY SCHOOL PUPIL, RESIDENT OF  
ANOTHER AND MORE DISTANT DISTRICT.

*SYLLABUS:*

*Where an elementary school pupil lives more than one and one-half miles from the school to which he has been assigned in his own district, but attends school in another district which is farther from the residence of such pupil than any school of the same grade in his own district, the board of education of such district where such pupil attends school cannot collect tuition from the board of education in the district where the pupils reside.*

COLUMBUS, OHIO, October 17, 1928.

HON. SCOTT GRAVES, *Prosecuting Attorney, Port Clinton, Ohio.*

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

“Kindly render your opinion upon the construction of General Code, Section 7735, in the following particular:

Is it necessary that the school of attendance in another district be nearer the place of residence than the assigned school in the district of residence, in order for the school board of the district of residence to be liable to the school board of the district of attendance for the tuition of pupils in grades below the high school?

The facts are as follows: The children of one Mr. . . . . . reside in Allen Township and have been assigned to the nearest Allen Township School, which is more than one and one-half miles, but less than two miles distant. They have been attending the Ross Township school because the Ross Township school bus passes near their residence. The Ross Township school is more than two miles from the residence of Mr. . . . . ., but is the nearest school in *another* school district.

The Ross Township school board is attempting to collect tuition from the Allen Township school board for the children of Mr. . . . . . Ross Township is in Lucas County, and Allen Township in Ottawa County.”

Section 7735, General Code, reads as follows:

"When pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another school district, in all grades below the high school. In such cases the board of education of the district in which they reside must pay the tuition of such pupils without an agreement to that effect. But a board of education shall not collect tuition for such attendance until after notice thereof has been given to the board of education of the district where the pupils reside. Nothing herein shall require the consent of the board of education of the district where the pupils reside, to such attendance."

Prior to the codification of 1910 the provisions of Section 7735, supra, were incorporated within the provisions of Section 4022a of the Revised Statutes. Said Section 4022a, Revised Statutes, was construed by our Supreme Court in the case of *Boyce vs. Board of Education of Mt. Carmel Special School District*, 76 O. S., 365, wherein it appears that the plaintiff brought suit in the court of common pleas for a writ of mandamus to compel defendant in error to admit his children of school age to the school located in the Mt. Carmel school district. The plaintiff in error alleged that the children resided with him in Beachwood special school district in Union Township; that there was but one school in the district in which he resided, which was located more than a mile and a half from the relator's home and that that was the school, to which his children were assigned, relator alleging that such children were entitled to admission to the school under the control of the defendants for the reason that the school so controlled by the defendants was the nearest school to his residence outside of his own school district, and in an adjoining school district. The petition admitted that the school to which such children were assigned was nearer his residence than the one to which he sought to have them admitted, but claimed that if his children were compelled to attend the school in the district where they resided, they would be required to travel along the public highway, which was shaded for a great distance with woods on either side, and quite lonesome and dangerous for children to travel without protection. The alleged right was based upon Section 7735 of the General Code (4022a, Rev. Statutes). In the syllabus of the case the court held as follows:

"Section 4022a, Revised Statutes, does not require the board of education of a school district to admit children to a school outside of the district in which they reside, unless the school in their own district is more than a mile and a half from their residence and more remote from their residence than the school to which admission is sought."

And at page 368 of the opinion the court says:

"It is equally clear from the language which the Legislature has employed that the only purpose to be accomplished by the section is to relieve school children from the necessity of attending a school in their own district which is more than one mile and a half from their residence if there is a nearer school in another district. Since the petition admits that the school which is under the control of the defendants is more remote from the residence of the relator than is the school of the district in which he resides, the circuit court correctly determined that the statute does not authorize the transfer."

In an opinion of the Attorney General, reported in the Annual Report of the Attorney General for 1914, Vol. I, page 862, it was held:

“When a pupil lives more than one and one-half miles from the school to which he is assigned and has been attending a nearer school in another township, when such other township centralizes its schools, and thus makes the centralized school further than the school to which he has been assigned, the board of education of his township cannot be compelled to pay tuition to the centralized school under the provisions of Section 7735, General Code.”

Again, in an opinion of the Attorney General, reported in the Opinions of the Attorney General for 1918, at page 1157, it was held:

“Where a pupil lives more than one and one-half miles from the school to which he has been assigned in his own district, but attends school in another district, which is farther from the residence of such pupil than the school in his own district, the board of education of such district where such pupil attends school cannot collect tuition from the board of education of the district where the pupil resides.”

It follows from the foregoing authorities that, when an elementary school pupil resides more than one and one-half miles from the school to which he has been assigned in his own district, and there is no other school in his own district which is nearer to his residence than the school to which he has been assigned, he may attend a nearer school in another district, and the board of education of the district where he resides must pay his tuition in the school which he attends without an agreement to that effect; but if he attends a school in another district which is farther from his residence than the school to which he is assigned, or farther from any other school in his own district, the board of education of the district where he resides is not liable for his tuition in the other school.

I am therefore of the opinion, in specific answer to your question, that the Allen Township School Board cannot be required to pay the tuition of the children of Mr. ----- to the Ross Township Board of Education.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2748.

CANAL LANDS—RELINQUISHMENT OF PORTION OF MIAMI AND ERIE  
CANAL TO CITY OF CINCINNATI—SUPERINTENDENT OF PUBLIC  
WORKS TO SIGN DEED.

*SYLLABUS:*

*The Superintendent of Public Works of Ohio is the proper officer to execute official documents on behalf of the state in connection with the relinquishment of certain surplus Miami & Erie canal lands by the city of Cincinnati to the State of Ohio, under authority of Amended Senate Bill No. 123 of the 87th General Assembly (112 O. L. p. 210).*

COLUMBUS, OHIO, October 17, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of October 9, 1928, as follows: