

2748.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE TALLMADGE HARDWARE COMPANY OF COLUMBUS, OHIO, FOR FINISH HARDWARE IN PHYSICAL EDUCATION BUILDING, MIAMI UNIVERSITY, OXFORD, OHIO, AT AN EXPENDITURE OF \$2,482.00—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONNECTICUT.

COLUMBUS, OHIO, December 30, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees, Miami University, Oxford, Ohio, and the Tallmadge Hardware Company of Columbus, Ohio. This contract covers the construction and completion of contract for Finish Hardware of P. and F. Crobin Manufacture in accordance with the base bid specification, pages 67 to 73, inclusive (not including alternates), is a building known as the Physical Education Building, Miami University, Oxford, Ohio, as set forth in Item No. 3 and Item No. 6 of the Form of Proposal dated December 8, 1930. Said contract calls for an expenditure of two thousand four hundred and eighty-two dollars (\$2,482.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also presented evidence to the effect that the Controlling Board has approved the expenditure as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond, upon which the Aetna Casualty and Surety Company of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2749.

COMPULSORY EDUCATION—CHILDREN MUST ATTEND SCHOOL TO WHICH ASSIGNED WHEN—IF INSUFFICIENT EDUCATIONAL ADVANTAGES AFFORDED, PARENT OR GUARDIAN SUBJECT TO PENALTY.

SYLLABUS:

Children of compulsory school age who are not employed on age and schooling certificates and of whom it has not been determined that they are incapable of profiting substantially by further instruction, according to law, must attend the school to which they are assigned by authority of Sections 7684 and 7764, General Code, or have furnished for them the opportunity of proper and sufficient educational advantages

according to law, else the parents, guardians or persons in charge of such children are subject to the penalties provided by the laws relating to compulsory education.

COLUMBUS, OHIO, December 30, 1930.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“I desire your opinion on the following matter: Certain pupils living in the Clarington district and who are or have been attending the school provided for them in said home district have taken it upon themselves to leave said school in their home district and are now attending a rural school in an adjoining school district. The Clarington school is a graded school, whereas, the school at which said pupils have taken themselves is a one-room rural school. Apparently said children are making this voluntary change of school for personal reasons and to embarrass the Clarington school teachers and the board of education of the township rural school district. Both the Clarington school and the school to which these children have made a transfer are under the jurisdiction of the Salem township rural school district. .

By reason of the fact that these children live in the Clarington district it was not thought necessary by the board to formally assign said pupils to their home school to which they have always gone. However, since this exodus from the Clarington school to a school in an adjoining district in the same township has been begun, the board of education has met and formally assigned said pupils to their school or the Clarington school and have directed the clerk to notify the parents of said children to see that said children attend the Clarington school. .

The question that now arises and the one of which I desire your opinion is whether or not said pupils in question who have changed schools as above described will be or not be subject to the compulsory education laws of Ohio in the event that said children refuse to return and attend the Clarington school. In other words, if said pupils insist on attending the school in the adjoining district and refuse to return to the Clarington school to which they have now formally been assigned by the board of education, will said pupils be subject to prosecution under the compulsory education laws or, rather, will their parents be subject to prosecution under the compulsory education laws.”

By force of the laws relating to compulsory education, Sections 7762, et seq., children between the ages of six and eighteen are said to be of “compulsory school age” and are required to attend the public schools or receive the equivalent of the educational requisites of the public schools by private instruction. There are certain exceptions and limitations to these requirements in cases where children are determined to be incapable of profiting substantially by further instruction and where they are excused and are employed on age and schooling certificates.

Every parent, guardian or other person having charge of any child of compulsory school age, who is not employed on an age and schooling certificate, and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, must furnish the means for such child to receive instruction as required by law. The requisite instruction, however, which a parent or guardian is required to furnish in order to meet the requirements of the compulsory education laws need not necessarily be furnished by sending the child to a public school,

but may be furnished to the child in a private or parochial school or by means of private tutors at home, so long as the instruction thus furnished is the equivalent of what would be furnished for the child in the public school which the child would be required to attend if it were not being furnished private instruction or instruction in a private or parochial school. See Sections 7763 and 7763-1.

Unless parents, guardians and persons in charge of children of compulsory school age who are not employed on age and schooling certificates, or who have not been determined in the manner provided by law to be incapable of profiting substantially by further instruction, furnish the requisite educational advantages for those children by sending them to private or parochial schools or by means of private tutors, they must send them to the public schools, as the law provides, or subject themselves to the penalties provided for failure to do so.

It is not clear from your statement whether the children in question who have been assigned to the Clarington school and who do not desire to attend that school, wish to attend another school in the same school district under the jurisdiction of the same board of education, or another school in another school district. In one place you state: "Certain pupils living in the Clarington district and who are or have been attending the school provided for them in said home district have taken it upon themselves to leave said school in their home district and are now attending a rural school in *an adjoining school district*." In another place you state: "Both the Clarington school and the school to which these children have made a transfer are under the jurisdiction of the Salem township rural school district." If both these schools are under the jurisdiction of the same board of education, they are not attempting to attend a school in an "adjoining school district."

Local boards of education are charged with the duty of managing the schools of their respective districts. Section 7690, General Code. As a part of those duties, assignments of resident pupils to schools within the district may be made. Section 7684, General Code, provides as follows:

"Boards of education may make such an assignment of the youth of their respective districts to the schools established by them as in their opinion best will promote the interests of education in their districts."

Pupils so assigned by authority of the aforesaid statute are required to attend the schools to which they are assigned, subject, however, to certain exceptions made by other statutes *in pari materia*. This rule is modified somewhat by Sections 7735 and 7764, General Code, which latter statute is a part of the compulsory school law. 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."

Section 7764, General Code, as it was enacted upon the recodification of the compulsory school laws in 1921 (109 O. L. 380), provided in substance that a child in his attendance at school should be subject to assignment by the principal or super-

intendent of schools, as the case may be, to the class in elementary school, high school or other school suited to his age and state of advancement and vocational interest, either within the school district or without the school district, provided, in case he was assigned without the school district, his tuition be paid and transportation furnished under certain circumstances. The said statute, Section 7764, was amended somewhat in 1925 to read as it now reads.

By the term "superintendent of schools" as used in Section 7764, General Code, is meant the county superintendent of schools in so far as it is applicable to rural and village school districts.

From the foregoing, it clearly follows that if the two schools mentioned by you are in the same school district, under the jurisdiction of the same board of education, and a proper assignment has been made of certain children to a certain school of the district by the board of education of the district, and this assignment is not modified or changed by the county superintendent of schools, the pupils are required to attend the school to which they are assigned, unless they come within the provisions of Section 7735, *supra*, or are excused from attendance at school according to law, and the parents, guardians or persons in charge of such children must send them to the school to which they are assigned, or provide the requisite school advantages for them otherwise, as noted above.

If the two schools mentioned are not in the same district, the local board of education cannot prevent the children from attending the school outside their home district by a mere assignment of the pupils to a school in the home district, if the county superintendent of schools assigns the children to the school outside of their home district. Section 7764, General Code, is of later enactment, it will be observed, than Section 7684, General Code. If the county superintendent of schools makes such an assignment of pupils to a school outside the home district by authority of Section 7764, General Code, the home district is required to pay the tuition of those pupils in the school to which the county superintendent assigns them. Even without such an assignment, if the board of education of the district in which these children wish to attend school outside their home district is willing to receive the children and the county superintendent of schools does not object and the parents or guardians or persons in charge of the children are willing to pay their tuition in this outside school, they may do so, even though a formal assignment of them has been made by the board of education of their home district to a school in their home district; and if such is the case, the parents, of course, would not be subject to the penalties provided by the compulsory school laws for failure to provide adequate school facilities for the children.

It all sums itself up to this: The children must attend the schools to which they are assigned or be provided educational facilities otherwise, else the parents, guardians or persons in charge of them may be prosecuted as provided by the compulsory school law. There are, however, a number of exceptions to the requirement that they attend the school to which they are assigned, as is noted above.

It cannot be said that parents or guardians of children must send those children to the school to which they are assigned or be subject to prosecution under the compulsory school law, as the children may be provided with proper school advantages without sending them to the school to which they have been assigned, and that is all that is necessary.

It may be asserted, however, that children of compulsory school age must be furnished proper educational advantages, or be excused from attendance at school for some lawful reason, or their parents, guardians or persons in charge of them will be subject to prosecution under the compulsory school law.

Respectfully,

GILBERT BETTMAN,

Attorney General.