

1411.

SCHOOL—BOARD OF EDUCATION NOT LIABLE FOR TUITION
OF PUPIL WHEN.

SYLLABUS:

Section 7735, General Code, does not impose a liability for tuition on a board of education of a school pupil's residence where the pupil resides more than one and one-half miles from the school in his home district to which he was assigned, unless the pupil attends a nearer school in another district.

COLUMBUS, OHIO, August 17, 1933.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

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

“I wish you would render this office an opinion relative to Section 7735 of the General Code of Ohio, which provides that:

‘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.’

My question is, where pupils reside more than one and one-half miles from the school district to which they are assigned, and where a centralized school, located about five miles from the home of the pupils in another township and school district, has a bus that passes near the home of the pupils, would this section apply and permit such pupils to attend the centralized school, and would the school district in which the pupils reside be compelled to pay tuition to such centralized school for said pupils?”

Before the codification of the statutes in 1910, the pertinent provisions of section 7735, General Code, quoted in your inquiry, were a part of section 4022a of the Revised Statutes. While these provisions were contained in section 4022a of the Revised Statutes, the Supreme Court of Ohio had occasion to pass on the question of their proper interpretation in the case of *Boyce vs. Board of Education*, 76 O. S. 365. It was there held:

“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.”

It was also held in a former opinion of this office:

“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."

See Opinions of the Attorney General for 1918, page 1157.

I am of the opinion that the authorities referred to above are dispositive of the question submitted. The fact that transportation is being furnished or would be furnished, if the pupil in question attended the centralized school five miles from his home, has nothing to do with the matter.

In specific answer to your question, therefore, I am of the opinion that the school district of the residence of the pupil in question would not be required to pay the tuition of the pupil if he attends the centralized school five miles from his home.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1412.

APPROVAL, NOTES OF SOUTH LEBANON VILLAGE SCHOOL DISTRICT, WARREN COUNTY, OHIO—\$1,626.00.

COLUMBUS, OHIO, August 21, 1933.

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

1413.

APPROVAL, NOTES OF ARCANUM VILLAGE SCHOOL DISTRICT, DARKE COUNTY, OHIO—\$777.00.

COLUMBUS, OHIO, August 21, 1933.

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

1414.

APPROVAL, NOTES OF MOSCOW CONS. RURAL SCHOOL DISTRICT, CLERMONT COUNTY, OHIO—\$4,633.00.

COLUMBUS, OHIO, August 21, 1933.

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