

2581.

BOARD OF EDUCATION—ILLEGALITY OF TRANSPORTING PUPILS TO PAROCHIAL SCHOOLS DISCUSSED.

SYLLABUS:

It is neither mandatory nor permissible for a school board to provide transportation for pupils attending a parochial school or other private school.

COLUMBUS, OHIO, September 17, 1928.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

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

“The Board of Education of St. Joseph Township School District, Williams County, Ohio, maintains conveyances for hauling pupils of its district to a centralized school, and in other instances provides transportation. There is a parochial school in this district maintained by the Catholic Church which has pupils attending this school from the same district. The question is, is it mandatory upon the school board to provide transportation to pupils attending a parochial school?”

Parochial schools are not a part of the public school system of the State. As the term is used it is understood to refer to schools conducted under the supervision of some particular sect, and as such, have been held to be private schools as distinct from public schools. *Waterson vs. Halliday*, 77 O. S., 175; *Quigley vs. State of Ohio*, 5 O. C. C. 638.

The question of the right of boards of education to pay transportation for pupils attending private schools was considered in three former opinions of this department to which your attention is directed. In an opinion rendered under date of July 11, 1927, and addressed to the Hon. E. B. Unverferth, Prosecuting Attorney, Ottawa, Ohio, which opinion is published in the Opinions of the Attorney General for 1927 at page 1245, it was held:

“There is no authority for the payment of tuition or the furnishing of transportation from public funds for pupils attending private schools, and any payment, made therefor by a board of education are illegal.”

Again, in an opinion rendered under date of October 1, 1927, and addressed to the Hon. R. L. Thomas, Prosecuting Attorney, Youngstown, Ohio, which opinion is published in the Opinions of the Attorney General for 1927, page 1935, it was held:

“Boards of Education in providing transportation for pupils attending school are limited to the providing of such transportation for pupils attending schools which are a part of the public school system of the state.

Pupils attending private schools are not entitled to the use of transportation facilities provided for pupils attending the public schools.”

The subject was again considered in its applicability to the payment for transportation of high school pupils in an opinion No. 2268, addressed to the Hon. C. E. Moyer, Prosecuting Attorney, Sandusky, Ohio, rendered under date of June 21, 1928, in which a like conclusion to that reached in the former opinion was stated.

In these several opinions the authorities were reviewed, and in the latter opinion attention was directed to Article VI, Section 2 of the Constitution of Ohio by the terms

of which the diversion of public school funds for the benefit of any religious sect or sects is positively forbidden. The exact question has never, so far as I know, been the subject of a judicial decision in this state. However, in the state of Wisconsin where there exist constitutional provisions with reference to public schools similar to those in this state, the Supreme Court of Wisconsin in the case of *State ex rel. Van Straten vs. Milquet*, 192 N. W. 392, held:

“* * *

The officers of a school district must act within the limitation of their statutory authority, and, where they are by statute required to act in a specified manner, they must conform to the statutory requirements.

* * *

In view of the provisions of Const. Art. 10, Section 3, requiring the establishment of district schools which shall be free to all children and in which no sectarian education shall be allowed, the provision of St. 1921, Section 40.16, subd. 1 (c), authorizing a district in which schools have been suspended to provide transportation to and from the school for all children residing more than one mile from the nearest school, must be limited, as is the provision of the same section for the payment of tuition, to the attendants at public schools in another district, and does not authorize the district to provide free transportation for children who desire to attend private schools.

Where a contract for the transportation of all the children of a district to an adjoining city was entire, and was intended to provide transportation for children attending parochial schools, as well as those attending public schools, the contract was void in toto, and the fact that two of the children transported by the contractor were attendants at the public schools does not save the contract.”

I am therefore of the opinion, in answer to your specific question, that it is neither mandatory nor permissible for a school board to provide transportation in any case for pupils attending a parochial school or other private school.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2582.

**ELECTORS—QUALIFIED RESIDENTS OF AFFECTED TERRITORY AT
TIME OF ELECTION—MAY VOTE ON BOND ISSUE.**

SYLLABUS:

Electors of a political subdivision for which a bond issue is proposed, otherwise qualified, are entitled to vote on the proposed bond issue regardless of whether or not they were qualified electors of that political subdivision at the time when the legislation for said proposed bond issue was started or completed.

COLUMBUS, OHIO, September 17, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following question:

“Question: Legislation was started for a bond issue for Fremont School District prior to September 1st. If on October the 5th, outlying territory is annexed to the Fremont School District, will the electors in the territory an-