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SCHOOL BUS DRIVER—EXEMPTED VILLAGE SCHOOL DISTRICT—CERTIFICATE OF AGE, MORAL CHARACTER, PHYSICAL FITNESS NOT REQUIRED — SECTION 7731-3 G. C. APPLIES ONLY TO CITY, VILLAGE AND RURAL SCHOOL DISTRICTS.

SYLLABUS:

School bus drivers may be employed in exempted village school districts without their having first secured a certificate as to age, moral character, and physical fitness of the driver as provided for school bus drivers in city, village and rural school districts under the provisions of Section 7731-3, General Code.

Columbus, Ohio, June 17, 1940.

Hon. Henry J. Knapke, Prosecuting Attorney,
Celina, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion which reads as follows:

“The superintendent of the Celina Exempted Village High School has requested that I obtain your opinion on the following questions:

Do the provisions of G. C. 7731-3 apply to the drivers of school busses for exempted village school districts?

Under the provisions of G. C. 7731-3, who should issue the certificate to a person employed as driver of a school bus for an exempted village school district?

As there is no provision made for violation of the above mentioned section, may state funds be withheld from an exempted village school district which violates the provisions of this section?"

Section 7731-3, General Code, provides as follows:

"When transportation is furnished in city, rural or village school districts no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position. The local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for the employment; said board or superintendent shall choose the examining physician; and, said examination shall be the only one necessary for a driver to pass. Any certificate may be revoked by the authority granting the same on proof that the holder thereof has been guilty of improper conduct or of neglect of duty and the said driver's contract shall be thereby terminated and rendered null and void."

It will be observed from the provisions of the foregoing statute, that no mention is made of exempted village school districts. In addition to that fact, no provision is made in the statute as to who should issue the certificate of qualifications of a school bus driver who might be employed in an exempted village school district even if the statute were subject to such construction as to prohibit the employment of drivers in such districts without the certification as to age, moral character and physical fitness as provided in the statute. Clearly, exempted village districts are not city districts nor are they a part of a county school district. That being so, it is manifest that under the terms of the statute, the superintendent of schools would not be authorized to issue the certificate nor would the county board of education, because the man would not be employed in the county school district.

Under the terms of Section 4679, General Code, as amended in 1921, school districts are classified as city districts, exempted village districts, vil-

lage districts, rural districts and county districts. Prior to that time exempted village districts were not included in the statute as a distinct and separate class of school district.

Section 7731-3, General Code, was first enacted by an Act of the General Assembly which was passed April 29, 1921 (109 O. L., 288, 289). The amendment to Section 4679, General Code, which placed exempted village school districts in a separate class, was enacted by an Act of the same General Assembly, which was passed May 14, 1921 (109 O. L., 552).

Therefore, the same General Assembly which amended Section 4679, General Code, and thereby placed exempted village school districts in a separate class, had also prior thereto in the same section enacted Section 7731-3, General Code, in its original form. Such being the case, it certainly must be assumed that that body, when it amended Section 4679, had full knowledge of the provisions contained in Section 7731-3.

A careful reading of the latter section as it now exists, will disclose that amendments made thereto since its original enactment, in no way affected the provisions contained therein which are pertinent to the question here under consideration. In other words, if said section, in its original form is applied to the instant case, the effect thereof would be the same as if applied in its present form.

In view of the above, it would therefore appear that the General Assembly, when it amended Section 4679, General Code, fully intended, while no good reason is apparent therefor, that only school bus drivers employed in city, rural or village school districts are required to secure the certificate provided for in Section 7731-3, General Code.

Therefore, in view of the language of Section 7731-3, General Code, I am forced to the conclusion that said statute has no application in exempted village school districts and that school bus drivers may be employed in exempted village school districts without their having first secured a certificate as to age, moral character and physical fitness of the driver as provided for school bus drivers in city, village and rural school districts under the provisions of Section 7731-3, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.