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EDUCATION, LOCAL BOARD OF—UNDER NO OBLIGATION TO FURNISH TRANSPORTATION FOR RESIDENT HIGH SCHOOL PUPILS WHO ATTEND HIGH SCHOOL IN ANOTHER DISTRICT—DISTRICT OF RESIDENCE MAINTAINS NO HIGH SCHOOL OF ITS OWN.

SYLLABUS:

A local board of education is under no legal obligation to furnish transportation for resident high school pupils attending high school in another district when the district of their residence maintains no high school of its own.

Columbus, Ohio, April 16, 1947

Hon. Robert M. Betz, Prosecuting Attorney, Gallia County
Gallipolis, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Will you please advise me as to the obligation of a local board of education to furnish transportation for resident high school pupils, when the district maintains no high schools of its own.

In the event that it is your opinion that the board does have the duty to transport, then, just what right of choice does the pupil have in selecting the high school which he will attend.

Also, if such duty does exist, how may the same be enforced?”

Provisions for the transportation of pupils to and from school are found in Section 4855, General Code, which reads as follows:

“In all city, exempted village and local school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education *shall provide transportation* for such pupils to and from school except when in the judgment of such Board of Education, confirmed, in the case of a local school district, by the County Board of Education, or, in the case of a city or exempted village school district, by the judge of the probate court, that such transportation is unnecessary.

In all city, exempted village and local school districts the board of education *may provide transportation* for resident high school pupils to the high school to which they are assigned.

In all city, exempted village and local school districts the board of education *shall provide transportation* for all children who are so crippled that they are unable to walk to the school to which they are assigned. In case of dispute whether the child is able to walk to the school or not, the district health commissioner shall be judge of such ability.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the Board of Education not later than ten days after the beginning of the school term.” (Emphasis added.)

It is to be noted that as to elementary school pupils living more than two miles from the school to which they are assigned, transportation by the Board of Education is mandatory; whereas, the provision for transportation for high school pupils is merely permissive. Section 4855-3, General Code, contains provision for attendance of pupils in some other district than that of their residence. That section reads as follows:

“The board of education of any city, exempted village or local school district may contract with the Board of another district *for the admission or transportation or both*, of pupils into any school in such other district, on terms agreed upon by such boards within the limitations of law. Whenever a board of education not maintaining a high school enters into an agreement with one or more Boards of Education maintaining such school for the schooling of all its high school pupils, the board of education making such agreement shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement; provided, however, that in case no such agreement is entered into, the high

school to be attended can be selected by the pupil holding an eighth grade diploma, and the tuition shall be paid by the board of education of the district of school residence. *The expense for the attendance of non-school resident pupils and for their transportation, if any*, shall be credited and paid in the manner provided in Sections 4848-4 and 4848-5 of the General Code; but *no compensation from state funds* shall be made to a receiving district for the *unauthorized attendance of non-school resident pupils* but in case of such unauthorized attendance compensation for the attendance of pupils shall be made to the district in which such pupils are school residents." (Emphasis added.)

Here, it will be observed that the board of education may enter into an agreement with the board of another district for the admission or transportation or both, of pupils into the schools of such other district. It is provided that when a board of education not maintaining a high school, enters into an agreement with one or more other Boards maintaining such school for the schooling of its high school pupils, then the board of education making such agreement is to be exempt from the payment of tuition *at other high schools* for pupils who live within three miles of the school designated in the agreement. There follows the provision that in case no such agreement has been entered into, the pupil who is qualified for high school by holding an eighth grade diploma may attend at any high school he selects and the board of education shall be responsible *for his tuition*.

The provisions just mentioned appear to relate only to the question of *tuition*. The final provision of the section is that the expense for the attendance of non-school resident pupils and for their transportation, *if any*, shall be credited and paid as provided in Sections 4848-4 and 4848-5. The use of the words "if any", makes it clear that the General Assembly had no intention in this section to impose any positive obligation on a board of education to provide transportation for its pupils who are forced to attend or who choose to attend a high school outside of the district.

I am not able to find any other provision in the present laws governing the conduct of schools which places upon the board of education a positive duty of providing transportation for its pupils attending high school either within or without the district of their residence, whether such attendance is by reason of the choice of the pupils or by reason of the entire absence of any high school in the district of their residence.

The section last above quoted does provide that the expense of providing for non-resident attendance is to be credited and paid in the manner provided in the sections relating to the school foundation law. A reference to Section 4848-4, General Code, particularly paragraph (e), reveals provisions made by law for enabling the state superintendent of public instruction to apportion the state public school fund so as to take care of expenses of transportation which the boards of education are authorized to incur. That section, in addition to granting a schedule of flat rates of allowance for pupils in average daily attendance in the various grades of the school, authorizes an additional grant as follows:

“(e) For districts in which transportation of pupils is necessary, an amount equal to the approved cost of such transportation service which shall be in addition to the amounts specified in paragraphs (a) and (c) or (d) of this section.

The superintendent of public instruction shall prescribe regulations governing methods and means of transportation and shall make recommendation as to the cost of foundation programs for pupil transportation in districts in which transportation is deemed necessary. The effects of sparsity of population and of other conditions reasonably beyond the control of the board of education of the school district shall be considered in the determination of such transportation costs. The costs of transportation in all instances shall be determined and fixed by the local boards of education, but not to exceed that recommended by the superintendent of public instruction.

(f) For districts with pupils in approved attendance in the schools of other districts, an amount equal to the total of the approved budget of tuition cost which shall be in addition to the amounts specified in paragraphs (a) and (c) or (d) of this section, provided, however, that where a district of school residence maintains no schools and the tax rate for current operating expenses of the district of school residence is less than that of the district of attendance, there shall be deducted from the budget of tuition cost of the district of school residence, an amount, equal to the computed yield of a tax on the general tax list and duplicate of the district of school residence, at a rate equal to 100 per centum of the difference in the tax rates of the respective districts.” * * *

It will be noted that this section authorizes the superintendent of public instruction to prescribe regulations governing “methods and means of transportation” but gives him no authority to require transportation in any case. Therefore, while a board of education which does provide

transportation for its pupils attending school in another district may secure from the state reimbursement for its expense, no obligation is imposed on the board to provide such transportation.

It is worth noting that under the statutes in force prior to the adoption of the new school code in 1943, there were provisions that appeared to put an obligation upon a board of education to provide transportation under certain circumstances, for high school pupils attending school in a district other than that of their residence. Section 7748, General Code, then in force, contained the following provision:

“A board of education *may pay the tuition* of all high school pupils residing more than four miles by the most direct route of public travel from the high school provided by the board when such pupils attend a nearer high school, or in lieu of paying such tuition the board of education *may pay for the transportation to* the high school maintained by the Board of the pupils living more than four miles therefrom.” (Emphasis added.)

This provision was held by the supreme court in several cases to impose a mandatory duty upon a board of education either to furnish high school facilities within four miles of the residence of children of school age or to furnish them transportation to a school at which the high school branches were taught. *State ex rel. Masters v. Beamer*, 109 O. S., 133; *Summers v. Board of Education*, 113 O. S., 177; *Board of Education v. Board of Education*, 126 O. S., 575.

In the enactment of the new school code, however, the provision of the former law seems to have disappeared and we have in its place the portion of Section 4855-3 which I have quoted.

It is therefore my conclusion, in specific answer to your first question, that a local board of education is under no legal obligation to furnish transportation for resident high school pupils attending high school in another district when the district of their residence maintains no high school of its own.

In view of the above conclusion, it appears that no answer need be made to your further inquiries.

Respectfully,

HUGH S. JENKINS,
Attorney General