

1042.

TRANSPORTATION—ELEMENTARY SCHOOL PUPILS—WHEN NECESSARY—ALTERNATIVE—SPECIFIC CASE.

SYLLABUS:

1. *Transportation to and from school must be furnished for elementary school pupils who reside more than two miles from the school to which they are assigned, or the parents or persons in charge of such pupils paid for transporting them.*

2. *The law requiring transportation to and from school, of elementary school pupils who reside more than two miles from the school to which they are assigned, is satisfied if the conveyance is made to run within one-half mile of a pupil's residence or the private entrance thereto.*

3. *If a conveyance for the transportation of elementary school pupils to and from the school is not made to run within one-half mile of the residence, or the private entrance thereto of a pupil who lives more than two miles from the school to which he has been assigned, transportation, in the sense contemplated, is not being furnished, and the parent or person in charge of the pupil may furnish transportation for the pupil, and recover from the board of education for such transportation in accordance with Section 7731 of the General Code.*

4. *The statutory requirement that boards of education of rural and village school districts shall transport to and from the schoolhouse pupils of the district who live more than two miles from the nearest school in the district in which they reside, does not require that such transportation be furnished to children living in the district who are attending a nearer school in another district, and mandamus does not lie to compel provision of such transportation.*

COLUMBUS, OHIO, October 17, 1929.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnelsville, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, which is as follows:

“The Malta Township board of education has discontinued one of its schools, the Hopewell school, and assigned all the pupils of their school to the Pennsville school four miles away in Penn Township, the Penn Township board of education agreeing to accept these pupils and is furnishing transportation for these pupils by school bus to and from the Pennsville school.

A Mr. Y., who resides in the territory formerly served by the Hopewell school and  $1\frac{3}{4}$  miles from the Hopewell school house where his children would have to meet the school bus, refuses to send his children to the Pennsville school on the grounds that transportation is not being furnished.

We are mindful of the provisions of Section 7731 of the General Code that the conveyance ‘must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable.’ Because of the road conditions and the fact that Mr. Y. would have had to send his children to the Hopewell school without transportation if that school had not been discontinued, the board of education has determined that transportation within the distance of one-half mile of his residence is unnecessary and impracticable.

Now under these conditions, is transportation being furnished, or offered,

to the children of Mr. Y? Can the board of education be compelled to transport these children to the bus? How far may children be required to travel to the bus? If there is a school nearer his residence than the Pennsville school, but farther from his residence than the point where his children would have to meet the bus going to Pennsville school, could Mr. Y. send his children to the nearer school and compel the board of education to pay for their transportation, provided the distance is two miles or more, if said nearer school is in a district other than that of their residence, also to pay their tuition?"

Sections 7730, 7731, 7731-4 and 7764, General Code, which are pertinent to your inquiry, read in part as follows:

Sec. 7730. "The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause \* \* \* . Whenever any school is suspended the board of education of the district shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such other school or schools as may be named by the said board of education. Upon such suspension the board of education in authority over such village or rural school shall provide for the transportation of all pupils so assigned who reside in the territory of the suspended school and who live more than two miles by the nearest traveled highway from the school to which they have been assigned, to a public school in the rural or village district or to a public school in another district, except when in the judgment of such board of education confirmed by the judgment of the county board of education such transportation is unnecessary. \* \* \* "

Sec. 7731. "In all city, exempted village, rural and village 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 school district of the county school district, by the judgment of the county board of education, \* \* \* such transportation is unnecessary.

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 and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable."

Sec. 7731-4. "If a local board deems the transportation, required under any provision of law, of certain children to school by school conveyance impracticable and is unable to secure what is deemed a reasonable offer for the transportation of such children, the local board shall so report to the county board of education. If the county board of education deems such transportation by school conveyance practicable or the offers reasonable they shall so inform the local board and transportation shall be provided by such local board. If, however, the county board of education agrees with the view of the local board it shall be deemed compliance with the provisions of Sections 7730, 7731, and 7764, General Code, by such local board if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school a rate determined for the

particular case by the local board of education for each day of actual transportation."

Sec. 7764. "The child in his attendance at school shall be subject to assignment by the principal of the public school or superintendent 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, within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in the case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school. The transportation of high school pupils under this section shall be in accordance with the provisions of Section 7749-1. \* \* \* "

Sections 7731, 7731-4 and 7764, supra, were enacted in their present form in 1925 (111 O. L. 123, 124, 125). The only change made in said sections of the Code at the time of their amendment in 1925, in so far as those changes are pertinent to the present inquiry, was the change made in Section 7731, supra. The said section of the Code formerly provided in substance that when transportation of the pupils is provided, the conveyance must pass within one-half mile of the residence of the pupils or the private entrance thereto. When amended in 1925, there were inserted the words "unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable" after this provision.

The history of the aforesaid sections of the Code shows that for a number of years the provision requiring transportation to be furnished for elementary school pupils who resided more than two miles from the school to which they had been assigned was qualified by the expression "except when in the judgment of such board of education, confirmed, in the case of a school district of the county school district, by the judgment of the county board of education \* \* \* such transportation is unnecessary." Yet it was also provided that if such transportation was not furnished, it was deemed compliance with the provisions of the Code requiring transportation if the parent or other person in charge of the child be paid for the transportation of the child, thus evincing a clear legislative intent that where a child lives more than two miles from the school to which it is assigned, either transportation must be furnished or provision made for the paying of the parent for transporting the child, so that the child would not be required to walk to school. These same provisions were retained, as you will note, in the statutes, as amended in 1925, which are now in force. The question now arises whether or not the running of a school bus which does not pass nearer than one and three-fourths miles from the residence of a child who resides more than two miles from the school to which it is assigned is the furnishing of, or the proffering of, transportation such as will fulfill the requirements of law.

It will be noted that the language of the former section, which provided that a school bus, when transportation is furnished, must pass within one-half mile of the residence of the pupils who are to be transported, was mandatory and the mandatory word "must" was retained at the time of the amendment. This mandatory provision, however, was qualified by the expression "unless the board of education determines that transportation within the distance of one-half mile of such residence or the private entrance thereto is unnecessary and impracticable." The statute, Section 7731, General Code, as amended, does not specifically provide how near or how far the school bus may pass from the residence of a child in case the board determines that transportation within one-half mile of the child's residence or private entrance

thereto is unnecessary or impracticable, and yet satisfy the requirements of law with reference to furnishing transportation. If the statute be construed as meaning that the board may, by simply determining that it is unnecessary and impracticable to provide transportation within one-half mile from a child's residence, run a school conveyance at such distance from the child's residence as it determines is practicable, and thereby satisfy the law requiring the transportation of pupils who live more than two miles from school, it could run the bus one and one-half miles, or three and one-half miles, or any distance, from the child's residence, just so an opportunity was afforded for the child to ride some little distance, be it ever so short, before arriving at school.

Such an interpretation would practically nullify the other provisions of the law on the subject and put it within the power of a local board of education to require a child to walk to where the board might choose to have the conveyance meet it and still be relieved from paying the child's parent for transporting the child. This would require, in my opinion, the parent or person in charge of a child to provide transportation for the child at least to the school bus without any recourse, although the several sections of the Code relating to the subject clearly require, in my judgment, that school boards provide in some manner for the transportation of pupils who live more than two miles from school, at least to and from a point one-half mile from the child's residence or private entrance thereto; and this policy has been consistently followed in successive legislation for a number of years. If such had not been the intention when Section 7731, General Code, was last amended, as noted above, it served no good purpose to retain in the statute the provision that the conveyance "must pass within one-half mile of the residence of such pupil."

There certainly was some object in retaining this language when the statute was amended. Had there not been some reason for retaining this language, it could well have been provided that the conveyance should pass as near to the child's residence as might be determined by the board of education to be necessary and practicable.

It is a familiar principle of law that statutes relating to the same subject, and which are said to be in *pari materia*, should be construed together so as to harmonize and give effect to their various provisions. It will be presumed that different statutory provisions relating to the same subject, and especially if enacted at the same session of the Legislature and as a part of one act, are imbued by the same spirit and actuated by the same policy, and they should be construed each in the light of the other. *Lewis Sutherland on Statutory Construction*, Sections 443, et seq.

Upon consideration of the several statutes herein referred to, and with the rule of statutory construction above stated in mind, I am satisfied that the proper construction of Section 7731, General Code, as amended in 1925, is to the effect that unless a school conveyance passes within one-half mile of a pupil's residence or the private entrance thereto, the child cannot be said to have furnished to it transportation privileges.

I am of the opinion that the reason for inserting the provision in Section 7731, General Code, relieving a board of education from the necessity of having a school bus pass within one-half mile of a child's residence, upon determination of the board of education that it is unnecessary and impracticable, is to provide for isolated cases where it is almost impossible to run a school conveyance within one-half mile of a pupil's residence, although the rest of the pupils in the district are being transported. This would obviate the possibility of the parent of such a child compelling the board by mandamus proceedings to pass within one-half mile of the child's residence or private entrance thereto and permit the board to pay the parent for transporting the child in accordance with the provisions of Section 7731-4, General Code.

In the concrete case which you state, Mr. Y., in my opinion, if he did not desire

to submit to having his child meet the bus one and three-quarter miles from his home, could transport the child himself and compel the board of education to pay for that transportation.

However, it appears that there is a nearer school in another district. If this other school is nearer to Mr. Y's residence than the Pennsville school, even though it be further than the child would be required to go to meet the school bus under present conditions, the child might attend the other school and the Hopewell board of education would be required to pay its tuition in this other school. Authority for such action is found in Section 7735, General Code, which provides in substance that when pupils live more than one and one-half miles from the school to which they are assigned, they may attend a nearer school in all grades below the high school, and the board of education in the district wherein they reside must pay the tuition of such pupils without an agreement to that effect, providing proper notice is given of their attendance in this nearer school. There is no provision, however, for requiring a school district of residence to pay transportation to the other school under such circumstances.

This question was considered by the Court of Appeals in the case of *State ex rel Keller vs. Board of Education of Licking County School District*, 11 Ohio App. 298, wherein it was held:

"The statutory requirement that boards of education of rural and village school districts shall transport to and from the schoolhouse pupils of the district who live more than two miles from the nearest school in the district in which they reside, does not require that such transportation be furnished to children living in the district who are attending a nearer school in another district, and mandamus does not lie to compel provision of such transportation."

I am of the opinion, therefore, in reference to the concrete case submitted, that Mr. Y. may himself, under the circumstances, transport his child or children in the elementary grades to the Pennsville school, and the Hopewell board of education can be required to pay him for such transportation, or he may permit the children to attend the nearer school spoken of, in which case the Hopewell board of education shall be required to pay the tuition of those children in this nearer school.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1043.

RESOLUTION OF NECESSITY—SUBMITTING LEVY OUTSIDE LIMITATIONS TO VOTERS—EFFECT OF FILING OF SUCH RESOLUTION WITH ELECTION BOARD AFTER STATUTORY TIME LIMIT.

SYLLABUS:

*Where, in submitting to the electors of the subdivision the question of a tax levy, the Resolution of Necessity of such levy is not filed with the election board prior to September 15th, as required by Section 5625-17, General Code, but all other provisions governing such submission are followed, and the question carries at the election, it is*