

The syllabus of that opinion held as follows:

“Inasmuch as there are special statutory provisions governing the organization of corporations for the specific purposes of paying the funeral expenses of its members and of paying benefits to sick and deceased members, a corporation may not be organized for these purposes, under the general laws, within the meaning of Section 8623, General Code.”

After a careful reading of said opinion and on an examination of the authorities cited therein, I find that I am in full accord with the conclusion of my honorable predecessor. See also Vol. I, Opinions of the Attorney General, 1913, p. 71; Vol. I, Opinions of the Attorney General, 1917, p. 924.

The purposes of said corporation in certain respects constitute those of a mutual protective association, the organization of which is authorized under Sections 9427, et seq. of the General Code, or of a fraternal benefit society, which may be formed under the requirements of Section 9462, et seq. of the General Code. It should be noted, however, that neither a mutual protective association nor a fraternal benefit society, organized under the respective provisions of the General Code, above cited, is authorized to provide specifically for payment of funeral expenses, although obviously this may be a result of the granting of death benefits. The purposes of the Douglass Mutual Aid Society, as disclosed by its articles of incorporation, do not bring it within the definition of societies or associations exempt from the laws governing mutual protective associations (see Sec. 9459, General Code), or the provisions of the General Code governing fraternal benefit societies (see Section 9491, General Code). If it is proposed to revise the articles of incorporation so that it will be exempt from the provisions of either of the chapters of the General Code, governing mutual protective associations or fraternal benefit societies, respectively, the purpose clause of the proposed articles of incorporation should contain the appropriate limitations of the purposes of the society and the qualifications for membership so that the eligibility of the society to claim exemption is clear and unambiguous. See Vol. I, Opinions of the Attorney General for 1913, p. 100. In addition to the limitations pointed out in the opinion of my predecessor cited, *supra*, it would seem necessary that the membership of said association should, in said proposed articles of incorporation, be specifically limited to five hundred. See Section 9491, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3013.

TRANSPORTATION OF PUPIL—CONVEYANCE PASSES WITHIN HALF MILE OF RESIDENCE OF SUCH CHILD—BOARD OF EDUCATION UNAUTHORIZED TO PAY FOR TRANSPORTATION TO MEET REGULAR CONVEYANCE.

SYLLABUS:

A board of education is not authorized to pay a parent or person in charge of a child or children, for transporting such child or children to meet the regular conveyance operated by or under the direction of the board for the transportation

of pupils to school, when the said school conveyance passes to within one-half mile of the residence of the child or children or the private entrance thereto.

COLUMBUS, OHIO, March 3, 1931.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

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

“The school board of Charlestown Township operates a bus on Route No. 80, which is a hard surface road. There is a family having children going to school living three-tenths of a mile off Route 80. The board has asked me if it is legal to pay the parents to bring these children to the paved road. It is my opinion that the school board has no authority to do this, this being based on the Opinions of the Attorney General for 1925 in Opinion No. 2274, in which it is said that the statutes give the school board no authority for paying the parents to transport their children or agreeing to induce or require their children to walk from their several places of residence a greater distance than said one-half mile. I now wish to have an official opinion from you whether the school board does have the authority to do this if the distance is less than one-half mile inasmuch as they are not required by statute to haul them within one-half mile of the residence if it is impracticable for them to do so.”

Boards of education are empowered to furnish transportation for pupils attending the public schools, and in some instances, are required to do so. See Sections 7730, 7731, 7749, 7749-1 and 7764, General Code. As stated in a former opinion of this office, found in Opinions of the Attorney General for 1928, p. 1733, there is no specific direction to, or limitation upon, boards of education as to how this transportation shall be furnished. The means of furnishing transportation are left to the discretion of the board and in the absence of an abuse of this discretion the board may furnish the transportation in any way it sees fit, providing the general provisions of law with reference to making contracts and expending public funds are complied with.

By force of Section 7731-4, General Code, boards of education in cases where they are required to furnish transportation, may pay the parent or other person in charge of a child or children for transporting such child or children, in lieu of furnishing the transportation themselves. Said Section 7731-4, General Code, reads in part, as follows:

“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. * * *”

In cases, however, where the board is required to furnish transportation, as in those cases covered by Sections 7730, 7731 and 7764, General Code, the board is not required to operate the school conveyance nearer to the residence of a pupil or the private entrance to such residence, than one-half mile, if the board determines that transportation within said distance of one-half mile of said residence, or the private entrance thereto, is unnecessary and impracticable. With reference thereto, Section 7731, General Code, provides:

“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.”

From the foregoing it clearly appears that in no case is a board of education required to transport pupils or furnish transportation for pupils nearer than one-half mile of their residences or the private entrances to said residences. No legal duty rests on the board to furnish this transportation; it may be provided, but the board is not compelled to do so.

It must at all times be borne in mind that boards of education are limited in their authority and have only such powers as are expressly granted to them by statute or necessarily included within such express powers to properly carry into execution the express powers so granted. It will be observed upon examination of the terms of Section 7731-4, General Code, that the only authority therein contained for paying a parent or person in charge of a child or children for transporting said child or children to school, in lieu of furnishing the transportation, is where a legal duty rests upon the board to furnish the transportation, in cases where transportation is “required under any provision of law.” As this is the only statutory provision authorizing the paying of a parent or person in charge of a child for transporting the child, we must conclude that so far as statutory authority is concerned it is only in cases where a board of education is required under any provision of law to furnish transportation that they are authorized to pay the parent or person in charge of the child for transporting the child, in lieu of the board’s furnishing the transportation itself.

As a board of education is not required to furnish transportation nearer than one-half mile of the residence of a child or the private entrance thereto, it does not have the power to pay the parent or person in charge of the child for providing transportation, for the reason that the statutes do not authorize such payment. Neither does the furnishing of such transportation by a parent or person in charge of a child constitute such an act of beneficial intervention in the discharge of another’s legal obligation as to result in the quasi-contractual obligation, for the reason that the furnishing of transportation for a pupil within one-half mile of his residence or the private entrance thereto is not a legal obligation of a board of education. Woodward, Law of Quasi Contracts, page 310; *Sommers v. Board of Education*, 113 O. S., 177 page 184.

Applying this principle to the facts set out in your inquiry, where, as you state, transportation is furnished by a regular school conveyance to within three-tenths of a mile of the pupil’s residence, it follows that the board of education can not lawfully pay the parent for transporting the pupil to a point three-tenths of a mile from his home where the school conveyance may be met.

The 1925 opinion, referred to in your letter, is not precisely in point. It in-

volved the paying of a parent for transporting his child to a point on the regular route of the school conveyance, which point was a greater distance from the child's residence than one-half mile. Moreover, the conclusion therein reached, was based largely on the provisions of Section 7731-4, General Code, then in force (109 O. L., 290). Said Section 7731-4, General Code, was amended in 1925 (111 O. L., 123). It is not necessary for the purposes of this opinion, however, for me to determine the effect the amendment of Section 7731-4, General Code, as made in 1925, might have on a situation such as that upon which the 1925 opinion was based.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3014.

TOWNSHIP TRUSTEE — YEARLY COMPENSATION — LIMITATION
THEREON APPLICABLE TO PERSON RATHER THAN OFFICE—
COMPENSATION OF PREVIOUS INCUMBENT DURING SAME
YEAR DISREGARDED.

SYLLABUS:

The amount earned by the predecessor of a person appointed to fill a vacancy in the office of township trustee shall not be taken into consideration in determining whether the \$250.00 yearly limitation of a township trustee's compensation to be paid from the township treasury has been exceeded.

COLUMBUS, OHIO, March 3, 1931.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication which reads as follows:

“Will you please give me an official opinion as to whether the compensation for a trustee appointed to fill the vacancy in the Board of Trustees caused by death of one of the members is limited in his compensation to the difference between the amount due the first trustee and the sum of \$250.00 which the statute provides shall be paid to any trustee of a township, under Section 3294 of the General Code, or is he entitled to the compensation earned without any limitation, except that it shall not exceed \$250.00?”

The facts of the case are as follows:

One of the trustees died after having earned the sum of \$230.00 as trustee, payable from the Township Treasury. The new trustee, since his appointment, is entitled to compensation in the sum of \$47.00 or \$50. The question is, is he entitled to the full amount earned by him, or the difference between \$230.00 and \$250.00, or \$20.00?

I have checked the Attorney General's opinions but am unable to find any opinion in point. The statute simply saying ‘the compensation of any trustee to be paid from the treasury shall not exceed \$250.00 in any year, including services in connection with the poor’ and does not state