

association of municipalities or to appropriate funds to pay for services rendered, or information furnished on municipal affairs by such association.

Respectfully,

JOHN W. BRICKER,
Attorney General

4447.

CHAUFFEUR—SCHOOL BUS DRIVER MUST BE REGISTERED
AS CHAUFFEUR—PHYSICAL EXAMINATION REQUIRED.

SYLLABUS:

1. *A person employed by a board of education to drive a motor vehicle for the transportation of school children to and from school must be duly registered as a chauffeur, in accordance with Section 6302, General Code.*
2. *Applicants for the position of driver of a motorized school conveyance for the transportation of public school children need take but one physical examination by an examining physician, as provided by Section 7731-3, General Code, for the determination of his physical fitness for the position.*

COLUMBUS, OHIO, July 22, 1935.

HON. SAM L. SUMMERS, *Prosecuting Attorney, Ravenna, Ohio.*

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

“Under House Bill 232 of the 91st General Assembly, regular session, in which Section 7731-3, relative to the qualifications of school bus drivers was amended, established a physical examination, as follows:

“The local board of education or the superintendent, as the case may be, shall provide for a physical examination and each driver is to be examined for his physical fitness for the employment, said board or superintendent shall choose the examining physician and the said examination shall be the only one necessary for the driver to pass.”

The question is, whether or not Section 7731-3 as now amended, relieves the drivers of school busses from applying for a chauffeur’s certificate under Section 6302?”

Section 7731-3, General Code, as enacted in House Bill No. 232, of the 91st General Assembly, a portion of which statute is quoted in your letter, reads 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.”

“Chauffeur” is defined in Section 6290 (15), General Code, as follows:

“Chauffeur” means any operator who operates a motor vehicle as an employe or for hire, or any operator, whether or not the owner of the vehicle, operating such vehicle for transporting, for gain, compensation or profit, either (1) persons, or (2) property owned by another.”

Section 6302, General Code, reads as follows:

“A person operating a motor vehicle as chauffeur, shall file, annually, by mail or otherwise, with the director of highways, or his duly authorized agent, upon blanks prepared under the authority of the director of highways, an application for registration. The director of highways shall appoint examiners and cause examinations to be held at convenient points throughout the state, as often as may be necessary.

Before any certificate of registration is granted, the applicant shall pass such examination as to his qualifications as the director of highways shall require. No chauffeur’s certificate of registration shall be issued to any person under sixteen years of age. Every application for certificate of registration as chauffeur shall be sworn to before some officer authorized to administer oaths, and must contain the name and address of the applicant, together with a statement that he is of sound mind and memory and physically competent to operate a

motor vehicle, together with a description of the vehicle, the trade name and kind or kinds of motor vehicles he is competent to operate, and whether or not such applicant has been convicted of violating a provision of this chapter or the penal statutes relating thereto, giving the date or place of such conviction, and the provisions of law so violated. Such said application for registration as chauffeur of a motor bicycle, motorcycle or motor tricycle shall be accompanied with a registration fee of one dollar, and such application for registration as chauffeur of any other motor vehicle shall be accompanied by a registration fee of three dollars."

In an opinion of a former Attorney General which will be found in the reported Opinions of the Attorney General for 1930, page 310, it is held:

"Persons employed by a board of education to drive a school wagon or motor van for the transportation of school pupils must be duly registered as a 'chauffeur' after making application therefor and successfully passing an examination as to his qualifications, in the manner provided in Section 6302, General Code."

The language of Section 7731-3, General Code, with respect to the taking of a physical examination to determine the physical fitness of school bus drivers, to the effect that the said examination provided for therein shall be the only one necessary for the driver to take is clear, and needs no interpretation. It is evident that it was the intent of the Legislature that school bus drivers, in so far as furnishing evidence of qualifications for driving conveyances for the transportation of school children is concerned, might do so by taking but one physical examination, and that the facts brought out at that examination should be the basis for determining his physical fitness for the position, regardless of who might be authorized to pass on those qualifications.

It is clear that the driver of a motorized school bus under contract with the board of education or with one who has contracted with the board of education to furnish transportation is, when driving such a vehicle, operating a motor vehicle for hire, and that therefore, he comes directly within the definition of a "chauffeur" as defined in Section 6290, General Code. The Legislature did not use any language whatever to indicate an intent that such a person need not procure a certificate of registration as a chauffeur. Surely the mere fact that he need take but one physical examination to determine his physical fitness to drive a motor vehicle cannot be construed to mean that he need have but the one certificate from the county board of education, as provided by Section 7731-3, General Code. Common sense teaches us that physical fitness is not the only qualification that a school bus driver or the driver of any motor vehicle on the public highways should possess in order to

qualify him to drive. This fact is reflected in both Section 7731-3, General Code, wherein it provides that the county board of education shall be satisfied that an applicant is of good moral character and is qualified physically and otherwise, before the certificate provided for by the statute is issued to him, and in Section 6302, General Code, in that it provides that an applicant for registration as a chauffeur shall pass such examination as to his qualifications as the Director of Highways thinks proper, and that his application for such registration shall state whether or not he has ever been convicted of violating the laws relating to the operation of motor vehicles.

A man may be ever so fit physically, to drive a motor vehicle on the public highways, yet if he does not know anything about the rules of the road and the laws relating to the operation of motor vehicles or, knowing them, has no respect for them, he certainly can not be said to be qualified to drive a school bus or be registered as a chauffeur. The statutes, both Sections 7731-3 and 6302, General Code, vest some discretion in the county board of education and the Director of Highways, respectively, in performing their duties under the statutes, and in exercising that discretion they should take into consideration other things in addition to physical fitness. That this is clearly the intent of the law is manifest by the fact that Section 7731-3, General Code, provides for a revocation of the driver's certificate, and Section 6298-1, General Code, makes similar provisions for the revocation of certificates of registration of chauffeurs for reasons not related to physical fitness.

It is of the highest importance that drivers of conveyances for the transportation of school children should be of a high type and qualified in every particular for the position. The lives of small children, many of them too young to take any precaution for their own safety, depend upon the care taken by the driver of the conveyance when transporting those children to and from school, and the law has wisely safeguarded those lives by requiring that the qualifications of the driver be passed upon not only by the county board of education but by the Director of Highways as well, and that a certificate as to such qualifications must be procured from each of those sources before anyone is permitted to drive that type of conveyance. Even then, serious accidents are too frequent.

In making physical examinations, the "examining physician" spoken of in Section 7731-3, General Code, does not pass upon the qualifications of the driver of a motor vehicle; he simply develops facts such as the possession by the person examined of all the members of the body necessary to operate the mechanism of a motor vehicle and the condition of those members, and the quality of sight and hearing possessed by the person being examined, and similar matters. When these are determined and listed, it is for the county board of education and the Director of Highways to determine from those facts whether or not the person is possessed of the proper qualifications to merit the certificate provided for by Section 7731-3, General Code, and the regis-

tration as a chauffeur provided for by Section 6302, General Code. All that the provisions of Section 7731-3, General Code, to the effect that a person in order to qualify for school bus driver need take but one physical examination amounts to, is that the facts developed by that examination shall be the basis for determining the physical fitness of the person for the position, and that he need not subject himself to another physical examination by an examining physician.

I am therefore of the opinion:

1. A person employed by a board of education to drive a motor vehicle for the transportation of school children to and from school must be duly registered as a chauffeur, in accordance with Section 6302, General Code.

2. Applicants for the position of driver of a motorized school conveyance for the transportation of public school children need take but one physical examination by an examining physician, as provided by Section 7731-3, General Code, for the determination of his physical fitness for the position.

Respectfully,

JOHN W. BRICKER,
Attorney General

4448.

APPROVAL, LEASE TO LAND IN SHARON TOWNSHIP,
FRANKLIN COUNTY, OHIO—CATHERINE C. HISLOP.

COLUMBUS, OHIO, July 22, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain land lease in duplicate, by the terms of which one Catherine C. Hislop, as the lessor, leases and demises to the State of Ohio, acting through the Conservation Commissioner on behalf of the Conservation Council, for the term of two years, a certain tract of 325 acres of land in Sharon Township, Franklin County, Ohio, said tract consisting of two original tracts of 100 acres and 225 acres respectively, which are more particularly described as follows:

“Being the South half of Lot No. twenty-three (23) containing 100 acres, all of Lot No. twenty-four (24), containing 200 acres and twenty-five (25) acres off of the west end of Lot No. twenty-five (25) of Daniel D. Smith and James Jenkins’ Subdivision of a part of Quarter Township 1, Township 2, Range 18, United States Military Lands, as the said lots are numbered and