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SCHOOL BOARD NOT COMPELLED TO CONSTRUCT TURN-AROUNDS FOR SCHOOL BUSES, BUT HAS THE POWER TO DO SO IF IT DEEMS SUCH ACTION NECESSARY FOR WELFARE OF ITS CHILDREN—OPINION NO. 1464, OAG FOR 1952, PAGE 382.

SYLLABUS:

There is no duty enjoined on a school board to create turn-around points for its school buses, but a school board has the power, when reasonably necessary in order efficiently and safely to provide transportation for school pupils, to acquire land adjacent to the limits of the highways, and construct such a turn-around thereon. (Paragraph 2 of the syllabus in Opinion No. 1464, Opinions of the Attorney General for 1952, page 382, approved and followed.)

Columbus, Ohio, October 11, 1961

Hon. Kenneth Koch, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir:

I have your request for my opinion concerning the power of a board of education to expend school funds to provide a turn-around for school buses. According to the information supplied with your request, the bureau of inspection and supervision of public offices has advised a member of a local school board in your county that a board of education is without authority to expend public funds for the purchase of land to create a turn-around, however, such board could expend funds for the maintenance of such a turn-around. In this regard, you have cited Opinion No. 1464, Opinions of the Attorney General for 1952, page 382, for my consideration.

Paragraph 2 of the syllabus in Opinion No. 1464, *supra*, provides as follows:

“2. There is no duty enjoined on a school board to create turn-around points for their school buses, but a school board has the power, when reasonably necessary in order efficiently and safely to provide transportation for school pupils, to acquire land adjacent to the limits of the highway, and construct such a turn-around thereon.”

While it is true that a board of education is without *express* authority

to expend public funds for the purpose of purchasing land to create a turn-around for school buses, my predecessor in the above opinion found *implied* authority for the board to expend public funds for such purpose in a proper case. An example of what my predecessor considered "a proper case" is found in the following language of Opinion No. 1464, *supra* :

"You have stated in your request that it is necessary to make a place for the school bus to turn. By this, I assume you have reference to a 'U' turn, after the completion of which the school bus will be proceeding back in the direction from which it came. I also assume that by the word 'necessary' you mean that *such a turn is expedient because it will avoid the necessity of having the school bus travel a circuitous route*. I can conceive of no situation in which a turn of this nature would be absolutely essential. Having made these assumptions, I shall address myself to the problem involved." (Emphasis added)

The general rule that a board of education has such implied powers as are reasonably necessary to effectuate its express powers is found in *Schwing v. McClure*, 120 Ohio St., 335 (1929), which is cited in Opinion No. 1464, *supra*. This rule has been relied on many times in the past. Thus, before there was express statutory authority granted to boards of education to purchase school buses, such authority was recognized as being incidental to the express powers granted to such boards to provide transportation for pupils. Opinion No. 5976, Opinions of the Attorney General for 1936, page 1262.

The express powers granted to boards of education to provide transportation for pupils are found in Section 3327.01, Revised Code, reading 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 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, such transportation is unnecessary.

"In all city, exempted village, and local school districts the board 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 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 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 not later than ten days after the beginning of the school term.”

After quoting the above language which was formerly contained in Section 4855, General Code, my predecessor in Opinion No. 1464, *supra*, stated as follows:

“In carrying out the mandate of the above section, I am of the opinion that a school board has the implied power to construct a school bus turn, *where such turn is reasonably necessary in order efficiently and safely to provide transportation for school pupils.*
* * *”
(Emphasis added)

In determining whether it is reasonably necessary to construct a turn-around point, however, a board of education should consider the provisions of Section 3327.02, Revised Code, reading as follows:

“If the board of education of a local school district deems the transportation, required under any law, of certain children to school by school conveyances impracticable and if it is unable to secure a reasonable offer for the transportation of such children the local board shall so report to the county board. If the county board deems such transportation by school conveyance practicable or the offers reasonable it shall so inform the local board and transportation shall be provided by such local board. If the county board agrees with the view of the local board it is compliance with section 3327.01 of the Revised Code, by such local board if such board agrees to pay the parent or other person in charge of the child for the transportation of such child to school at a rate determined for the particular case by the local board for each day of actual transportation.

“The teachers in charge of such children shall keep an accurate account of the days the children are transported to and from school. A failure of a parent or guardian to arrange to have his child transported to school, or his failure to have the child attend on the ground that the transportation is not supplied cannot be pleaded as an excuse for the failure of such parent or guardian to send such child to school or for the failure of the child to attend school.”

Thus, it might be more practicable for a board of education to pay the parent or other person in charge of the child for the transportation of such

child to school rather than construct a turn-around point for the school bus. If the board deems such transportation by school bus more practicable, however, then it should give consideration to such factors as safety, economy, and time (note that the board must adopt a time schedule for the bus under Section 3327.01, *supra.*)

It is my opinion, therefore, and you are accordingly advised that there is no duty enjoined on a school board to create turn-around points for its school buses, but a school board has the power, when reasonably necessary in order efficiently and safely to provide transportation for school pupils, to acquire land adjacent to the limits of the highway, and construct such a turn-around thereon. (Paragraph 2 of the syllabus in Opinion No. 1464, Opinions of the Attorney General for 1952, page 382, approved and followed.)

Respectfully,

MARK McELROY

Attorney General