

3677.

TRANSPORTATION—HIGH SCHOOL PUPILS—COUNTY BOARD OF  
EDUCATION DETERMINES NECESSITY—WHERE LOCAL BOARD  
FAILS TO FURNISH, COUNTY BOARD MAY.

*SYLLABUS:*

*When a county board of education deems and declares the transportation of high school pupils in any district, to be advisable and practicable, a duty thereupon devolves on the board of education of the district in which the pupils reside to furnish such transportation, and if the local board fails to perform that duty it may be performed by the county board of education in the same manner as the local board should have performed it by authority of section 7610-1, General Code.*

COLUMBUS, OHIO, October 21, 1931.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

“The Ashtabula County Board of Education acting under Section 7749-1, General Code, has deemed and declared it advisable and practicable that the Board of Education of Saybrook Township Rural School District provide transportation for high school students to Ashtabula City High School, there being no high school in Saybrook Township. School has commenced and the transportation has not been provided by the local board.

If the local board continues to fail to provide transportation, is there a duty resting upon the County Board to provide said transportation?

Section 7610-1, G. C. does not seem to include this situation. The question seems to be as to whether or not an individual would need to bring an action in mandamus against the local board to compel them to provide the transportation, or whether or not the county board could provide it and charge to the local board. The reason the local board has not provided it, has been due to lack of funds.”

Section 7749-1, General Code, to which you refer, reads as follows:

“The board of education of any district, except as provided in section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation.”

The above statute has been held by the Supreme Court to be constitutional in the case of *Minshall et al. v. Board of Education*, 124 O. S., 61, Ohio Bar, issue of July 21, 1931. See also *Lichty v. Board of Education*, 27 N. P., N. S., 52, reversed by the Court of Appeals, 35 O. A., 81.

The language of the above statute is mandatory in that, when transportation to a high school is deemed and declared by a county board of education to be advisable and practicable, a duty devolves upon the local board of education of the district wherein high school pupils reside, to furnish such transportation. After the county board of education has made a finding to the effect that the transportation of pupils to high school in any district is deemed and declared to be advisable and practicable, the furnishing of that transportation by the board of education of the district wherein those children reside is one of the school privileges to which those children are entitled and which should be furnished by the local board.

If the local board fails to furnish this school privilege it may be furnished by the county board of education the same as other school privileges by authority of section 7610-1, General Code. Said section reads in part, as follows:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, \* \* the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. \* \*"

Judge Allen, in her opinion in the case of *State ex rel. Masters v. Beamer et al.*, 109 O. S. 133, said at page 139:

"Under Section 7610-1 the duty of the county board of education is measured by the duty of the board of education in the district."

Inasmuch as a duty devolves on the local board of education to furnish transportation to high school as soon as the county board deems and declares such transportation to be advisable and practicable, it clearly follows that if the local board fails to perform that duty, it should be performed by the county board in accordance with the provisions of section 7610-1, General Code.

I am therefore of the opinion, in specific answer to your question, that the county board of education may, under the circumstances outlined by you, furnish high school transportation in the Saybrook Township Rural School District by authority of Section 7610-1, General Code, and that it is not necessary that an action in mandamus be first brought against the local board of education to furnish the transportation.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*