

Administration amounting to 45% of the total contract, the estimate of cost, the notice to bidders, proof of publication, the certificate of premium payment for Workmen's Compensation Insurance, recommendation of the State Architect and Engineer to enter into contracts, recommendation of acceptance of this bid, the direction of the Department of Public Works to the State Architect to prepare contracts, approval of the P.W.A. in Ohio, Controlling Board releases, certificate of the filing of the necessary papers and documents in the State Auditor's office, the tabulation of bids, and the form of proposal properly executed, containing a corporate statement, non-collusion affidavit, and the contract bond in the amount of \$21,000, with the United States Fidelity and Guaranty Company as surety, its power of attorney for its signer, financial statement and its certificate of compliance with the laws of Ohio relating to surety companies.

Finding said contract and bond in proper legal form, I have this day endorsed my approval thereon and am returning the same herewith to you, together with all other papers submitted in this connection.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1697.

TRANSFER OF COUNTY SCHOOL DISTRICT TO SCHOOL DISTRICT OF CONTIGUOUS COUNTY—VIOLATION OF COMPULSORY EDUCATION LAWS—HOW ENFORCED.

SYLLABUS:

Where part or all of an adjoining district of a county school district has been transferred to a contiguous county school district, violations of the compulsory education laws committed in the territory that was transferred to the contiguous county school district must be prosecuted in the county wherein is situated the territory that was transferred, and not in the contiguous county to which said territory was transferred for school purposes only.

By virtue of the provisions of Section 7769-1, General Code, it is for the attendance officer of the contiguous county to which said territory was transferred for school purposes, to do the work necessary in instituting proceedings against a parent for failure to send his child

to school, although the parent resides in the county from which the territory was transferred to the contiguous county, for school purposes.

COLUMBUS, OHIO, December 30, 1937.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

"In the past few weeks we have had a number of requests concerning the jurisdiction of the Probate Judge in requiring children to attend school. The situation is simply this:

Wayne Township, a school district formerly in Ashtabula County, was legally transferred by the Ashtabula County Board to the Trumbull County School District and subsequently assigned by the Trumbull County Board to a contiguous school district in Trumbull County. A child residing in what was formerly the Wayne Township of Ashtabula County refuses to attend school.

Under such circumstances, who has the authority to enforce the Compulsory Education Law? The Probate Judge in Trumbull County and the Trumbull County Attendance Officer or the Attendance Officer in Ashtabula County?

We should like your opinion on this as soon as possible in order that we may get action and the child may not be denied educational advantages."

It can be said that the substantial effect of the transfer of territory from one school district to another, is that the electors residing in the transferred territory become duly qualified electors in school matters in the district to which the territory is annexed, and that the territory transferred to a school district is taxed with the school district to which it was transferred. However, it is obvious that it cannot be said that the change effected in the voting in, and taxation of school territory transferred to another school district will in and of itself change criminal jurisdiction in the prosecution of cases for violation of the compulsory education law that may be committed in the territory that was transferred to another school district.

As stated in the case of *State vs. Dangler*, 74 O. S., 49:

"Generally speaking, it is a fundamental rule of criminal procedure that one who commits a crime is answerable therefor only in the jurisdiction where the crime is committed, and in

all criminal prosecutions, in the absence of statutory provision to the contrary, venue must be laid as in the county of the offense, and it must be proved as laid."

By the provisions of Section 7769-1, General Code, an attendance officer must be employed by every county board of education who "shall work under the direction of the county superintendent of schools," and, the authority of such attendance officer "shall extend to all the village and rural school districts which form the county school district."

Section 7770, General Code, vests the attendance officer with police powers and the authority to serve warrants, enter places where children are employed, do whatever is necessary to investigate a violation of, or to enforce the compulsory laws, and "take into custody any youth of compulsory school age not legally employed on an age and schooling certificate who is not attending school and shall conduct such youth to the school he has been attending or should rightfully attend."

Section 7771, General Code, provides, among other things that, the "attendance officer shall institute proceedings against" any parent violating any provision of the laws relating to compulsory education.

Section 7773, General Code, provides in part, as follows:

"When any child of compulsory school age in violation of the provisions of this chapter, is not attending school, the attendance officer shall notify the parent, guardian or other person in charge of such child of the fact, and require such parent, guardian or other person to cause the child to attend school forthwith; and it shall be the duty of the parent * * so to cause its attendance at school. Upon failure of the parent * * to do so, the attendance officer shall make complaint against the parent, * * in any court of competent jurisdiction."

By the provisions of Section 7763, General Code, every parent having charge of any child of compulsory school age who is not employed on an age and schooling certificate, and who has not been determined in the manner provided by law to be incapable of profiting substantially by further instruction must send such child to school.

• Section 12974, General Code, provides a penalty for failure to send a child to school, as provided in Sections 7763 and 7773, General Code.

Section 12981, General Code, vests mayors, justices of the peace, police judges and judges of juvenile courts with final jurisdiction to try offenses against the compulsory education laws.

By the provisions of Section 12982, General Code, fines collected for violation of the compulsory education laws are to be paid into the funds of the school district in which the offense was committed.

Section 12983, General Code, provides that any person who after a complaint made against him under a law relating to compulsory education permits such child to leave the territory under the jurisdiction of the court, before hearing of the complaint, shall be fined.

An examination of the above sections relating to an offense committed by a parent in not sending his child to school, shows that there is not anything in any of the provisions that can be interpreted or construed as affecting the general rule of prosecuting the defendant in the county wherein the crime was committed. The provisions of Section 7769-1, *supra*, limiting the authority of the attendance officer to the territory of the county school district, of Section 7770, *supra*, in authorizing the attendance officer to conduct the pupil to the school he should rightfully attend, of Section 12983, *supra*, making it an offense if the child leave the territory under the jurisdiction of the court all negative any argument contrary to the general rule that prosecution must be had in the county in which the offense was committed.

As stated in the case of *State vs. Dangler*, *supra* :

“It is therefore only necessary in order to determine the proper venue or place of trial to ascertain in what county the offense charged in the indictment was actually committed. An offense is committed in that county in which the acts constituting the same are done.”

By the provisions of Sections 7763 and 7773, General Code, the offense committed is failure to send the child to school, or in other words, failure to cause the child to attend school. There is not any question, but that the offense in the instant case arose or was committed in Ashtabula County, when the father failed or refused to send the child in question to school.

In the case of *Grahn vs. State of Ohio*, 9 O. D., 816, it was held, as follows :

“The intent of Sec. 4022, Rev. Stat., the Truancy law, as amended 87 O. S., 144, is to secure the trial of parents, charged with having failed to cause their children to attend school, within the district where the offense occurs and the court may insert proper punctuation to give said statute that effect.”

Although the compulsory education law has been changed since the decision in that case, it can be said that the statutes relating to compulsory education laws at that time like the present, made no provision for establishing venue in the prosecution of offenses against compulsory education laws.

I wish to call attention to the fact that in 56 Corpus Juris, 830, the case of *Grahn vs. State of Ohio, supra*, and *Pcople vs. Saddlemire*, 180 N. Y. S., 257, are cited to substantiate the following principle of law:

“The trial of an offense against a compulsory education law should be had within the bounds of the school district where the offense occurred, which is in the district where the child resides, before a court or officer having jurisdiction of the offense, and on a proper complaint, and following the procedure stipulated by statute.”

Specifically answering your question it is my opinion that, since under the provisions of Section 7769-1, *supra*, the authority of the Attendance Officer includes the territory of the entire county school district, it is for the Attendance Officer of Trumbull County to do the work necessary to institute proceedings against the parent residing in Wayne Township, Ashtabula County, for failure to send his child to school and the criminal prosecution must be had in Ashtabula County.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1698.

APPROVAL—GRANTS OF EASEMENT EXECUTED TO THE STATE OF OHIO BY SEVERAL PROPERTY OWNERS IN LIBERTY, JACKSON AND LOUDEN TOWNSHIPS, SENECA COUNTY, OHIO.

COLUMBUS, OHIO, December 30, 1937.

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

DEAR SIR: You have submitted for my examination and approval certain grants of easement, executed to the State of Ohio, by several property owners in Liberty, Jackson and Loudon Townships, Seneca