

1551.

BOARD OF EDUCATION—MAY NOT PAY THE CHAUFFEUR'S LICENSE FEE REQUIRED OF A SCHOOL BUS DRIVER.

SYLLABUS:

1. *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.*

2. *A board of education is not authorized or permitted by law to pay the fee which must be paid for a chauffeur's license to properly qualify a person for employment by the board as a driver of a school wagon or motor van used in the transportation of pupils.*

COLUMBUS, OHIO, February 24, 1930.

HON. CHAS. T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

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

I understand you recently gave an opinion that bus drivers operating school busses must pass a certain examination and pay a license fee of \$5.00 each.

You must have based your opinion under Section 6302 of the General Code.

If this is your construction of the section in regard to drivers of school busses, is it legal for the Board of Education to pay the said license out of the school funds?

Most of the drivers in our county are men of limited means and are paid a small sum for their services and cannot afford to pay this fee of \$3.00."

My former opinion, to which you refer, in which it was held that bus drivers operating school busses were "chauffeurs" as the term is defined in Section 6290, General Code, and were required therefore to be licensed in the manner provided by Section 6302, General Code, was Opinion No. 1443 issued under date of January 24, 1930, and addressed to the Secretary of State. The syllabus of that opinion reads as follows:

"1. An operator of a school bus used to transport pupils to and from a school house is a chauffeur within the meaning of Section 6290, General Code, and should be registered after having made application and successfully passed an examination as to qualifications as set forth in Section 6302, General Code.

2. Any person who is employed for the purpose of operating a motor vehicle, and so operates a motor vehicle must be registered as a chauffeur."

I find no provision of law which would authorize a board of education to pay the fee which a person must pay to qualify himself to be a "chauffeur" so that they may lawfully become an employe of the board of education to drive a school bus.

You are no doubt familiar with the principle of law that administrative boards such as boards of education are limited in the expenditure of public funds to such expenditures as are expressly authorized or as are necessary to carry out the powers of the board and unless there is some provision expressly authorizing an expenditure such as the payment for a chauffeur's license for a bus driver or unless it might be

said that that expenditure is necessary in order to employ a driver the board clearly would have no right to make such an expenditure.

Inasmuch as the statute sets forth the qualifications that a school bus driver must possess before he may be employed as such, it behooves the driver to bring himself within those qualifications before he may be employed, and in doing so it will be necessary for him to pay whatever fee must be paid for the chauffeur's license. There would be no more authority for a board of education to pay the fee for a chauffeur's license for their school bus driver than there would be for the board to pay the fee a teacher must pay in procuring a teacher's license.

A special statute, Section 9573-1, General Code, authorizes a board of education or a state, county, township or municipality to pay the premium of any duly licensed surety company on the bond of any public officer, deputy or employee. Such payment to be made from public funds, but there is no similar provision of law authorizing or permitting the payment of such fees as the license fee for a "chauffeur."

I am therefore of the opinion that a board of education is not authorized or permitted by law to pay the fee which must be paid by a school motor bus driver for a chauffeur's license to properly qualify him.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1552.

APPROVAL, NOTES OF MENTOR RURAL SCHOOL DISTRICT, LAKE COUNTY—\$200,000.00.

COLUMBUS, OHIO, February 24, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1553.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING NEAR HEBRON, LICKING COUNTY, OHIO.

COLUMBUS, OHIO, February 24, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of February 21, 1930, enclosing copy of a contract providing for the elimination of a grade crossing about one and three-fourths miles north of Hebron in Licking County, Ohio, where the right of way of The New York Central Railroad Company crosses State Highway No. 359.

I have carefully examined the agreement and find it correct in form and hereby approve the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.