

OPINION 65-14**Syllabus:**

A board of education may, pursuant to Section 3327.01, Revised Code, authorize its school busses to travel upon privately owned roads for the purpose of transporting school children residing in homes abutting such private roads. (Opinion No. 1415, Opinions of the Attorney General for 1950, approved and followed).

To: John G. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, January 27, 1965

Your request for my opinion poses the question of the effect of dedication for private use of a housing development including all roadways therein, upon the transportation of public school pupils residing therein.

The transportation of public school pupils is primarily governed by the terms of Section 3327.01, Revised Code, which reads 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 pro-

vide 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."

In Opinion No. 1415, Opinions of the Attorney General for 1950, page 52, it was opined that, pursuant to Section 4855, General Code (now Section 3327.01, supra), a board of education may authorize its school busses to leave a public highway and enter a privately owned road for the purpose of transporting school children in houses abutting such privately owned road. The basis of Opinion No. 1415, supra, was Opinion No. 7368, Opinions of the Attorney General for 1944, page 745. In Opinion No. 7368, supra, it was determined that Section 4855, General Code (Now Section 3327.01, supra) gave a measure of discretionary power to the local boards of education to determine how near the home of a pupil a school bus may pass. My predecessor in office found that when Section 4855, General Code, was enacted, it eliminated language from the former Section 7731, General Code, which set forth the requirement that busses must pass within one-half mile of the residence of a child being transported by a school bus. The conclusion expressed in Opinion No. 7368 that the local boards have discretionary power in this matter was reached by comparing these two statutes. It was reasoned that the legislature in enacting Section 4855, General Code (Section 3327.01, Revised Code) intended to exclude the half-mile requirement of Section 7731, General Code. I concur in the conclusions of Opinion No. 7368, supra, and Opinion No. 1415, supra, insofar as they relate to the power of a board of education to authorize a school bus to enter upon a private road for the purpose of transporting children to and from a public school. In so doing, a board of education may, pursuant to Section 3327.03, Revised Code, adopt a resolution or resolutions designating certain places as depots from which to gather children for transportation to school. Any depots so designated are required by Section 3327.03, Revised Code, to be provided with a shelter and made comfortable during cold and stormy weather.

In the event that the members of the board of education in question determine that, due to the circumstances, it is impracticable to operate school busses in the area, other arrangements may be made to transport children to school in order to comply with Section 3327.01, supra. In Section 3327.02, Revised Code, provision is made for the local boards of education to pay for private transportation of pupils where it is

determined that a need exists therefor upon the concurrence of the county board of education with a local board of education. If it is determined that a dangerous condition exists and if the county board of education concurs in the determination, private transportation may be authorized by the local board of education and payment made therefor, pursuant to Section 3327.02, supra.

Certainly the use of private roadways to transport pupils to and from school can have no affect upon the tort liability of the school board. Your attention is directed to Shaw v. Board of Education, 17 Ohio Law Abs., 588. In branch six of the syllabus the court held that "(a) board of education cannot be sued in a tort action, in the absence of statutory authority." This is in keeping with Section 16 of Article I, Constitution, which reads in part as follows:

"Suits may be brought against the state in such courts and in such manner, as may be provided by law."

An examination of the Revised Code fails to disclose any such statutory authority as that referred to in Shaw v. Board of Education, supra. It necessarily follows that if the board of education would continue school bus service to the privately owned area, the board would not be liable in tort.

In view of the foregoing, it is my opinion and you are advised that a board of education may, pursuant to Section 3327.01, Revised Code, authorize its school busses to travel upon privately owned roads for the purpose of transporting school children residing in homes abutting such private roads, (Opinion No. 1415, Opinions of the Attorney General for 1950 approved and followed).