

1661

EDUCATION, BOARDS OF—AUTHORIZED TO PERMIT SCHOOL BUSES TO BE USED TO TRANSPORT ATHLETIC TEAMS AND OTHER PUPILS OF THEIR RESPECTIVE SCHOOLS TO AND FROM INTER-SCHOOL ATHLETIC CONTESTS—NOT AUTHORIZED TO PAY EXPENSE OF OPERATING SUCH BUSES—SECTION 4855 ET SEQ., G. C.

SYLLABUS:

Under the provisions of Section 4855 et seq., General Code, boards of education are authorized to permit their school buses to be used for the purpose of transporting the athletic teams and other pupils of their respective schools to and from inter-school athletic contests, but are not authorized to pay the expense of operating such buses while so engaged.

Columbus, Ohio, March 5, 1947

Hon. Albert T. Stroup, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“I would like to have your opinion as to whether or not county school boards may permit their school buses to be used for the purpose of transporting athletic teams to and from inter-school athletic exhibitions and if there is no authority what liability the school board or the members individually might incur by permitting said school buses to be used for such purpose.”

Section 4855 of the General Code imposes a duty upon Boards of Education to provide transportation for school pupils. That section 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 of Education, 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, that such transportation is unnecessary.

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

It will be noted that the duty imposed by this section is confined to the transportation of pupils “*to and from school*” and that there is no intimation of any authority to provide such transportation to and from athletic contests or any other school functions. The above section which is part of the new school code of 1943, is quite similar to former Section 7731 of the General Code. Section 4855-5 of the General Code which is also part of the new school code, contains the following provision:

“Boards of Education, in the purchase of school buses and other equipment used in transporting children to and from school *and to other functions as authorized by the Boards of Education* shall be authorized to make such purchases on the following terms, to wit: not less than one-fourth of the purchase price thereof shall be paid in cash; * * *. Such Boards of Education shall be authorized to issue the notes of the school districts signed by the president and clerk of the Board of Education, and specifying the terms of the purchase including deferred payments as provided above, which notes may bear interest at a rate not exceeding four per cent per annum. In the legislation under which such

notes are authorized, the Board of Education shall make provision for levying and collecting annually by taxation amounts sufficient to pay the interest and the specified portion of the principal:
* * *.”
(Emphasis added.)

Here it will be observed that the boards are authorized, at least by strong implication, to *purchase* buses not only for the purpose of transporting school children to and from school but also “*to other functions* as authorized by Boards of Education.” The same language had been carried in former Section 7732, General Code enacted in 1939. While neither the present nor the old section contains express affirmative authority to provide transportation to and from other school functions, yet it seems to me that we must concede that the General Assembly did intend Boards of Education to have such power.

This conclusion is strengthened by the provisions of Section 6295-1, General Code enacted in 1935, and reading in part as follows:

“No school bus as hereinafter defined shall be required to pay the annual license tax provided for in Section 6291 of the General Code. The term ‘school bus’ as used herein shall be construed to mean any vehicle, however owned, used exclusively to transport school children, either to and/or from school, *or to and/or from any school function*, having a seating capacity of more than five persons exclusive of the driver.”

(Emphasis added.)

Your letter indicates that the buses in question belong to the county board. It is a little difficult to find authority in the statutes for the purchase of buses by a county board. They are not included in the provisions of Section 4855 *supra*, making it the duty of certain boards to provide transportation. Former Section 7731 did give them express authority to provide such transportation in case a rural board failed to do so. If they still have that duty, it does not appear that they may perform it by purchasing buses. It will be noted that Section 4855-5 *supra*, contemplates the purchase on installments, and authorizes the levy of a tax to cover the notes given for deferred payments, which would exclude county boards since they are not taxing subdivisions within the provisions of the Uniform Tax Law. However, I do not consider the right to own buses as having a controlling bearing on the question you submit. We may assume for our purpose that the board has buses either on lease or under contract for service.

What "other functions" are properly included, and what should be excluded as proper school functions within the meaning of these statutes relating to transportation, can hardly be defined as a matter of law. It appears to me that it is a matter that is left to the sound discretion of the Board of Education. That the programs of the public schools as well as of institutions of higher learning do almost universally include athletics and athletic contests by teams representing the schools, hardly needs argument. Physical culture is a well recognized part of the curriculum of every school, and while it would be difficult to demonstrate that a pupil receives physical culture, other than by way of exercising his lungs, by watching a team chosen from his school engaged in a strenuous contest with a like team from another school, yet I am not disposed to deny that it is a school function, and a legitimate one.

Prior to the enactment of Section 6295-1 supra, the law provided that "publicly owned and operated motor vehicles used exclusively for public purposes, shall be registered as provided by this chapter, without charge of any kind." There being no specific exemption in the law as it then stood, in favor of school buses, it was held by one of my predecessors in an opinion found in 1933 Opinions of the Attorney General, p. 821, that it was unlawful for a school bus driver to transport a basket ball team to a distant point in a school bus so registered, for the purpose of an athletic contest, and that he was subject to prosecution for so doing. The above opinion refers with approval to an earlier opinion found in 1933 Opinions of the Attorney General, p. 552, wherein it was held:

"1. Boards of Education are without power to expend school funds under their control to support or promote the competitive playing of games by picked teams from the pupils of the public schools. * * *

3. Interscholastic athletics as the term is commonly used, is not a proper public school activity under the law.

4. A Board of Education in Ohio is not authorized to pay from public funds under their control the expense of furnishing basketball, football or baseball uniforms for the high school basketball, football or baseball teams, as the case may be.

5. A Board of Education is not authorized to pay from public funds for the expense of transporting their basketball, football or baseball team to a distant point for the purpose of holding an athletic contest between that school team and a team representing another school."

I need not disagree with that opinion. It was rendered at a time when there were no statutes in existence which contemplated the use of school buses to convey pupils to "school functions." I am in agreement with the holding there announced, that a Board of Education may not pay from public funds, the expense of operating buses to transport pupils or athletic teams to a game. But there is certainly abundant evidence of the intention of the General Assembly that the board may permit the use of its facilities for purposes far beyond those which it is authorized to support. Instances of this character may be found in the statutes which authorize the use of the school buildings for public gatherings, election polling places, etc. See Section 4839 et seq., General Code.

As to the use of school buses for purposes other than the primary purpose of transporting pupils to and from school, there seems to be good reason for a liberal attitude on the part of the law, since the "other functions" referred to all have a bearing of more or less importance on the education and development of the pupils along extra-curricular lines. It is noteworthy that the uses to which school buses are being put by Boards of Education throughout the state include not merely athletic events, but visits to the state capitol and many other points of interest or historical significance. And as conducing to the safety of these expeditions, the General Assembly has seen fit to authorize policies of insurance to be procured by Boards of Education insuring the drivers of buses against liability, and also carrying accident insurance protecting the pupils while riding in such buses. Section 4855-6 provides in part:

"The Board of Education of each school district may procure liability and property damage insurance covering each school bus or motor van *and accident insurance covering all pupils transported under the authority of such Board of Education.* This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state of Ohio, and such accident insurance shall provide compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school bus, motor van or other vehicle *used in the transportation of school children,*
* * *"
(Emphasis added.)

The language of this statute appears to be in line with the others quoted, as contemplating that the uses to which school buses may be put in transporting children include all such school related functions *as the board may see fit to authorize.*

As evidence of the changing attitude toward the very general practice of using school buses for extra-curricular activities, I call attention to another opinion by my immediate predecessor found in 1942 Opinions of the Attorney General, p. 805, where it was held:

“A Board of Education is not authorized to engage in the business of transporting persons for hire or of using or permitting the use of school buses for the purpose of transporting passengers other than school children to and from public schools *or to and from public school functions.*” (Emphasis added.)

This opinion was rendered after the passage of Sections 4855-5 and 6295-1 supra, in which the words “and to other functions” were introduced, and the then Attorney General was evidently influenced by that change since he introduced substantially the same words into the syllabus and the text of his opinion. There was a statement in the course of this opinion to the effect that “the cost of such transportation is provided for by law and is met from public funds.” I do not, however, find any provision of the statutes which in terms or by necessary implication authorizes the payment of such expense, except in so far as it is represented by the depreciation of the bus itself. Accordingly, I must hold that the Boards of Education may not bear the operating expense incident to such transportation.

Accordingly, in specific answer to your question it is my opinion that under the provisions of Section 4855 et seq., General Code, Boards of Education are authorized to permit their school buses to be used for the purpose of transporting the athletic teams and other pupils of their respective schools to and from inter-school athletic contests, but are not authorized to pay the expense of operating such buses while so engaged.

Respectfully,

HUGH S. JENKINS,
Attorney General.