

1795.

APPROVAL, BONDS OF MARION COUNTY, OHIO, IN AMOUNT OF \$38,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, January 17, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

1796.

BOARD OF EDUCATION—TRANSPORTATION OF CHILDREN WHO LIVE LESS THAN TWO MILES FROM RURAL ELEMENTARY SCHOOL, OPTIONAL—WHEN BOARD RECEIVING ELEMENTARY PUPILS FROM ANOTHER DISTRICT CAN COLLECT TUITION—NOTICE REQUIRED BY SECTION 7735 G. C. DISCUSSED.

1. *The transportation of children who live less than two miles from a rural elementary school is optional with the board of education (7731).*

2. *A school district receiving elementary pupils from another district because such pupils are attending their nearest school and are located more than one and one-half miles from the school to which assigned, can collect the tuition for such pupils from the district in which they reside (7735 G. C.).*

3. *The "notice" required by section 7735 G. C. is a notice from the board of education in which the pupils are attending to the board of education of the district in which they reside that a claim will be made for tuition, the purpose of such notice being to give the debtor board opportunity to settle the claim before the expense of suit is incurred.*

COLUMBUS, OHIO, January 18, 1921.

HON. WALTER B. MOORE, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department on the following statement of facts:

"R. with a family of three children of school age live in the Norris school district, in Center township, Monroe county, Ohio, and school is being conducted by the board of education in that district. R. lives more than one and one-half miles from the Norris school house, and less than two miles therefrom and within about one-half mile of the Woodsfield village school.

"Can the board of education of Center township be compelled to transport R.'s children of school age to Norris school house?"

"If R.'s children attend the Woodsfield village school, can the board of education of Woodsfield village district collect compensation for their attendance from the board of education of Center township if notice is given as required by law?"

Your first inquiry is as to whether the board of education of Center township will be compelled to transport these children of school age to the rural (Norris) school house. The answer to this question is found in section 7731, as amended in 107 O. L., page 625, which provides that in all rural and village school districts,

where pupils live more than two miles from the nearest school house, the board of education shall provide transportation to such pupils to and from such school, but the transportation for pupils living less than two miles from the school house by the nearest practicable route for travel accessible to such pupils, shall be optional with the board of education.

As to a construction of what is meant by "nearest practicable route" as appearing in this section, see Opinions of the Attorney-General for 1919, Vol. 2, page 1439. Inasmuch as you indicate that these children live less than two miles from the nearest school operated by the board of education in the district, their transportation to such school would be optional with the board, but if they lived more than two miles, the board would be compelled to provide such transportation. For a further discussion of school transportation, see

Opinion No. 1104, Vol. 3, Opinion of Attorney-General, 1915, p. 2398.

Opinion No. 143, Vol. 1, Opinion of Attorney-General, 1917, p. 353.

Opinion No. 910, Vol. 1, Opinion of Attorney-General, 1918, p. 17.

The answer to your second question is found in section 7735, which provides that when pupils live more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in the same district, or if there be none nearer therein, then the nearest school in another district, in all grades below the high school. In such case the board of education of the district in which they reside must pay the tuition of such pupils without an agreement to that effect, but a board of education shall not collect tuition for such attendance "until after notice thereof has been given to the board of education of the district where the pupils reside" (7735). See also section 7737 G. C.

As to the meaning of the word "notice" in this section, your attention is invited to the case of Board of Education vs. Board of Education, 20 O. N. P. (n. s.) 193, the syllabus of which reads in part:

"1. The notice required by section 7735, which permits children residing more than one mile and a half from the school to which they are assigned to attend a nearer school in another district, is a notice from the board of education of the district in which the children are attending to the board of the district in which they reside that a claim will be made for their tuition, the purpose of such notice being to give the debtor broad opportunity to settle the claim before the expense of suit is incurred.

"2. Knowledge of the board of the district in which the children reside, of the fact that they are attending school in an adjoining district and acquiescence therein is sufficient to satisfy the requirement as to notice."

You indicate that these children are "of school age" and it is presumed you have in mind that they are pupils below the high school. Transportation of high school pupils is covered by section 7749 G. C.

In answer to your questions, it is the opinion of this department that:

1. The transportation of children who live less than two miles from a rural elementary school, is optional with the board of education (7731 G. C.).

2. A school district receiving elementary pupils from another district because such pupils are attending their nearest school and are located more than one and one-half miles from the school to which assigned, can collect the tuition for such pupils from the district in which they reside (7735 G. C.).

3. The "notice" required by section 7735 G. C. is a notice from the board of education in which the pupils are attending to the board of education of the district

in which they reside, that a claim will be made for tuition, the purpose of such notice being to give the debtor board opportunity to settle the claim before the expense of suit is incurred.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1797.

MUTUAL PROTECTIVE ASSOCIATIONS—MAY ONLY INSURE PROPERTY AUTHORIZED BY SECTION 9593 G. C. ET SEQ.

Mutual protective associations incorporated under section 9593 et seq. G. C. may only insure the property therein authorized. Hence, an amendment to the articles of incorporation purporting to empower the association to insure "all property" located in certain named townships, is unauthorized.

COLUMBUS, OHIO, January 19, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date with which you transmitted for approval a certificate of amendment to the articles of incorporation of The Paris and Washington Townships Home Insurance Company, was duly received.

The company named was incorporated under articles dated July 5, 1881, and filed in the office of the secretary of state on July 11th of that year. Incorporation and organization of the company was authorized by section 3686 et seq. R. S. The law in effect at that time apparently permitted the company to insure property generally of members against loss by fire and other casualties, but by subsequent legislation the statutes were amended so as to empower companies belonging to the same class of insurance companies as The Paris and Washington Townships Home Insurance Company, viz., mutual protective associations, to insure certain kinds or classes of property only. This amendatory legislation was and is authorized by section 2, Article XIII, Ohio Constitution, which provides that "corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed."

The amendatory legislation is now embodied in sections 9593 et seq. G. C.,—the powers of such companies or associations being found in section 9593 G. C. See 107 O. L., page 696.

This department heretofore has had occasion to consider and pass upon the scope and effect of amended section 9593 G. C. supra, and in Opinion No. 1596 addressed to you under date of September 28, 1920, it was held that "mutual protective associations incorporated under authority of sections 9593 et seq. G. C. are not empowered to insure property generally, but may only insure the property therein authorized." Your attention is respectfully directed to that opinion.

The certificate of amendment above mentioned undertakes to amend the company's articles of incorporation so as to authorize it to insure "all property" situated in Paris and Washington townships, Stark county, Ohio; and since under section 9593 G. C. and Opinion No. 1596, supra, mutual protective associations are not authorized to insure property generally, but may only insure the property therein specified, I am obliged to return the certificate of amendment without my approval endorsed thereon.

Respectfully,
 JOHN G. PRICE,
Attorney-General.