

4348.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN FAYETTE COUNTY, OHIO.

COLUMBUS, OHIO, May 21, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4349.

APPROVAL, NOTES OF WATERLOO RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—\$15,000.00.

COLUMBUS, OHIO, May 21, 1932.

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

4350.

BOARD OF EDUCATION—ASSIGNMENT OF PUPILS—ELECTION OF HIGH SCHOOL BY PUPIL—LIABILITY OF BOARD OF HIS RESIDENCE FOR TRANSPORTATION AND TUITION WHERE STUDENT ATTENDS SCHOOL IN ANOTHER DISTRICT.

SYLLABUS:

1. A county board of education is without power to make assignments of pupils residing in the county district to the schools of the several local districts comprising the county school district.

2. When a local district board of education contracts with another district board of education for the admission of any or all of its resident pupils into the school of such other district, in pursuance of Section 7734, General Code, or Section 7750, General Code, such contract is in effect an assignment of the pupils affected thereby to the schools of the other district.

3. Even though a high school pupil residing in a school district which does not maintain a high school, is assigned to a high school outside the district of his residence, the pupil may elect to attend another high school, and the question of the liability of the board of education of the district of his residence for tuition in the high school which he elects to attend, and transportation to said high school, will be governed by the provisions of Sections 7764 and 7750 of the General Code of Ohio.

4. When a pupil residing in a school district which does not maintain a high school has been assigned to a high school outside the district, which is more than four miles from his residence, and transportation is furnished thereto and he elects to attend a high school other than the one to which he has been assigned, the board of education of the district of his residence is liable for so much of the cost of his tuition in the school which he chooses to attend, and of his transportation thereto,

as the said board would be required to pay for his tuition in the school to which he had been assigned and of his transportation thereto.

COLUMBUS, OHIO, May 23, 1932.

HON. JESSE K. GEORGE, *Prosecuting Attorney, Steubenville, Ohio.*

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

“Wells Township, a School District having no high school, made an agreement with the village of Brilliant, Ohio, to take care of their high school students.

Some eleven students living within four miles of the village of Smithfield, Ohio, are attending the Smithfield High School. These eleven pupils were assigned to the Smithfield High School by the County Board of Education. These same eleven students who were to attend the Brilliant High School, would have to be transported in an overcrowded bus to Brilliant, a distance of about twelve miles.

Could any part of the tuition or transportation from Wells Township Board of Education be paid for the eleven students attending Smithfield High School?”

Pertinent to your inquiry are Sections 7750 and 7764 of the General Code, which read as follows:

Sec. 7750. “A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such notice to be filed not less than five days previous to the beginning of attendance.”

Sec. 7764. “The child in his attendance at school shall be subject to assignment by the principal of the public school or superintendent of schools as the case may be, to the class in elementary school, high school or other school, suited to his age and state of advancement and vocational interest, within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in the case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school. The transportation of high school pupils under this section shall be in accordance with the provisions of 7749-1. The board of education of the district in which the child lives shall have power to furnish such transportation. Provided, however, that when a high school pupil shall attend a high school other than that to which such pupil has been assigned, the transportation and

tuition shall be based on the cost of the transportation and tuition incident to attendance at the school to which they shall have been assigned."

It will be observed from the provisions of Section 7750, *supra*, that when a board of education not having a high school, makes an agreement with one or more boards of education for the schooling of all its high school pupils it shall be exempt from the payment of tuition at other high schools of all resident pupils who live within three miles of the school designated in the agreement. Inasmuch as the pupils mentioned in your inquiry all reside more than three miles from the Brilliant High School the provisions of Section 7750, General Code, are not in any wise helpful in answering your inquiry.

In addition to the authority extended to boards of education by Section 7750, *supra*, to contract with other boards of education for the schooling of all their high school pupils, authority is extended to a board of education by force of Section 7734, General Code, to contract with a board of another district for the admission of any or all of the pupils of the district, of whatever grade, into any of the schools of the other district. Said Section 7734, General Code, reads as follows:

"The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expense so incurred shall be paid out of the school funds of the district sending such pupils."

Section 7734, *supra*, is quite old, having been enacted in 1876, (73 O. L. 243, Sec. 64.) It has not been amended or repealed since that time. It is broader in its scope than Section 7750, General Code. It permits contracting for admission of any or all pupils of one district into any school of another, and contains no limitations or exceptions whatever. The apparent purpose of the enactment of Section 7750, General Code, enacted first in 1902, was to supplement Section 7734, General Code, so as to permit high school pupils who reside more than three miles from the high school maintained by the board with which the contract for the schooling of the pupils was made, to attend some other school, and to fix the liability of the board of education of the district of the pupil's residence for the payment of tuition under those circumstances.

In 1921, Section 7764, General Code, was enacted, providing that pupils may be assigned to schools outside the district of their residence by the superintendent or principal of schools, if the schooling suitable to their age and state of advancement is not available within the district.

As the superintendent or principal of schools in one district has no control over the schools of another district and has no power to compel the board of education of another district to accept pupils, an assignment to those schools is ineffective unless a contract exists between the board of education of the two districts providing for the admission of the pupils into the schools of the district to which the assignment is made. Each board of education has control of the question of whether or not non-resident pupils will be admitted to the schools maintained by it, and no power exists for any other administrative officer or board to control its discretion in the matter, unless possibly in state aid districts where the Director of Education may, under some circumstances, intervene.

The statutes authorizing boards of education to admit non-resident pupils is permissive in character. It provides, "each board of education may admit other persons" (meaning others than residents) "upon such terms or upon the payment

of such tuition within the limitations of other sections of law as it prescribes." See Section 7682, General Code.

Section 7764, *supra*, clearly contemplates in my opinion, that a contract exists between two boards of education for the admission of pupils from one district into the schools of another, or at least the consent of the board of education into whose schools the children are being assigned must be obtained before an assignment made by authority of the statute is effective. When a contract is made by authority of Section 7734, General Code, or Section 7750, General Code, it amounts to an assignment of the pupils affected by the contract, to the schools maintained by the board of education with which the contract is made. While this view presents no great difficulty and no authority would probably need be cited to support the conclusion, authority is nevertheless available.

A former Attorney General, in an opinion found in the reported Opinions of the Attorney General for 1918, at page 927, held as follows:

"A board of education may contract under the provisions of Section 7734, General Code, with another board of education for the admission of pupils into the schools of such other district and such contract is in effect an assignment of the pupils to such other district school."

It appears from your inquiry, that even though the Wells Township Board of Education made an agreement with the Board of Education of the Brilliant School District "to take care of their high school students" the county board of education assigned eleven of those students to the Smithfield High School and those eleven students have been attending the Smithfield High School pursuant to the said assignment.

I know of no authority for a county board of education to make assignments of pupils. The powers of a county board of education are purely statutory. It, like other administrative boards, is limited strictly in the exercise of its powers, to those either expressly or impliedly granted. This principle of law is too well settled to need citation of authority. There are certain administrative powers with respect to schools granted to county boards of education, but those powers do not include the assignment of pupils residing in the county district to the schools of the district nor does it include the power to require local boards of education to admit certain pupils to their schools.

The management and control of all the schools of a school district are reposed in the board of education for that district by force of Section 7690, General Code. Section 7684, General Code, empowers local boards to assign pupils of their respective districts to schools maintained by them. Section 7734, *supra*, authorizes boards of education to contract with other boards for the admission of pupils of any and all grades residing in its district to the schools of the other district, and Section 7750, General Code, grants similar authority with respect to high school pupils. Section 7682, General Code, grants to each local board of education the power to admit non-resident pupils.

Matters relating to the assignment of pupils and the contracting with other districts for the schooling of non-resident pupils is left entirely, by force of the statutes noted above, to local boards of education.

There is an apparent conflict between those statutes noted above and Section 7764, General Code, wherein authority is granted to the principal of the school or the superintendent, as the case may be, to assign pupils to the schools within the district, and in some cases, without the district. It is my opinion, however, in spite of the fact that Section 7764 is of later enactment than Sections 7690,

7731, 7750, 7682 and 7764, General Code, that it does not repeal by implication the powers granted by these sections to boards of education to control and manage the schools of their districts, assign the pupils, contract with other districts for the admission of pupils and to consent to the admission of non-resident pupils. These several statutes must be construed together, and the intention of the legislature gathered in so far as possible from such construction.

In some respects, it is difficult to fully harmonize the provisions of these several statutes. It is not necessary, however, to pursue this subject further in answering your present inquiry. It is apparent that pupils may be assigned to schools outside the district of their residence and that local district boards of education may contract with each other for the admission of pupils of one district to those of another. No provision is made, however, authorizing county boards of education to make these assignments or to control local boards in making assignments or in contracting with each other with reference thereto.

It seems clear that when a contract is made by a board of education for the admission of the pupils of its district into the schools of another, it amounts to an assignment of the pupils to the schools of the other district. It seems equally clear, upon consideration of the provisions of Section 7764, General Code, in the light of its history and of other sections of the Code relating to the same subject matter, including in addition to those mentioned above, Sections 7747, 7748, 7749 and 7749-1, General Code, relating to tuition and transportation of high school pupils, that the intention of the legislature, as expressed in the statute, is that the provisions of that statute shall govern with respect to the matters with which it deals in all cases of assignment of high school pupils to schools outside the district of their residence, regardless of how or by whom the assignment may be made.

I gather from your inquiry, that the contract of the Wells Township Board of Education with that of the Brilliant District was for the schooling of all the high school pupils residing in Wells Township District. It also appears that transportation was being furnished for all such pupils to the Brilliant District School. It does not appear whether the attempted assignment made by the county board of education of eleven of those students to the Smithfield schools was made before or after the Wells Township Board had contracted with the Brilliant District Board. This, however, makes no difference. The so-called assignment was without authority and of no effect. The fact is that eleven students did attend the Smithfield school, and your inquiry is, "Could any part of the tuition or transportation from Wells Township Board of Education be paid for the students attending Smithfield High School?"

If the Wells Township Board had contracted with the Smithfield Board for the schooling of the eleven pupils in question, and thereby these students had been assigned to the Smithfield School, all their tuition could lawfully be paid by the Wells Township District and the cost of their transportation could also lawfully be paid if the Wells Township Board desired to do so. It appears, however, that this was not done, but that a contract was made with the Brilliant District for the schooling of all the high school pupils residing in the Wells Township district, including these eleven pupils in the high school maintained by the Brilliant Board of Education and transportation to that school was being furnished, or offered, for all these pupils. An assignment of all these pupils was thereby effected to the Brilliant High School. That being the case, the question of the payment of tuition and transportation for the eleven students attending Smithfield School is governed by the last sentence of Section 7764, General Code, which reads as follows:

"Provided, however, that when a high school pupil shall attend a high school other than that to which such pupil has been assigned, the transportation and tuition shall be based on the cost of the transportation and tuition incident to attendance at the school to which they shall have been assigned."

In accordance with this provision of law, I am of the opinion, in specific answer to your question, that the Wells Township Board of Education, not only may, but is required under the law to pay so much of the cost of tuition and transportation for the eleven students attending Smithfield High School as it would be required to pay for those students if they had attended the Brilliant High School, to which they had been assigned.

For a further discussion of the principles of law applicable to situations of this kind, your attention is directed to the Opinions of the Attorney General for 1930, page 1464, and to Opinion No. 4223 rendered by this office under date of April 1, 1932.

I have assumed, in the preparation of this opinion, that the Brilliant High School is a high school of the first grade. If it is not, the conclusion might be somewhat different. See Sections 7747 and 7748, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4351.

REFERENDUM PETITION—VILLAGE—NAMES MAY BE WITHDRAWN UNTIL PETITION CERTIFIED BY CLERK TO BOARD OF ELECTIONS—NO AFFIDAVIT REQUIRED FOR SUCH WITHDRAWALS—BOARD OF ELECTION MAY INVESTIGATE SIGNATURES AND IF INSUFFICIENT REFUSE TO SUBMIT TO ELECTORS.

SYLLABUS:

1. *Names may be withdrawn from a village referendum petition at any time until it has been certified by the clerk to the board of elections, even though such certification is made after the expiration of the ten day period during which the clerk must keep the petition open for public inspection.*
2. *Names of subscribers to a village referendum petition may be withdrawn upon the request of such subscribers, and it is not necessary that the paper bearing such requests contain any affidavit either of the signers thereof or of the circulator thereof.*
3. *A Board of elections has the right to canvass the signatures on a village referendum petition, and it is not required to submit the ordinance or other measure to the electors of the municipality for their approval or rejection if the signatures on such petition are insufficient.*
4. *While there is no express authority for the village clerk to certify withdrawals from such a petition to the board of elections where such certification has been made, such board would have the right to consider them along with the petition, and if the signatures to the petition are insufficient by reason of such withdrawals, or for any other valid reason, it would not be required to submit the ordinance or other measure to the electors of the municipality.*