

The third deed submitted to me is a Quit-Claim Deed executed by one Nellie W. Campbell the widow of said Horace W. Campbell, deceased. This deed has likewise been properly executed and acknowledged and the same as to form is effective to convey and release to the State of Ohio any interest which said Nellie W. Campbell may have in the particular estate in said premises here under consideration by reason of the fact that she is the beneficiary of the trust created by the last will and testament of said Horace W. Campbell, deceased, and by reason of the fact that she did not formally elect to take under the last will and testament of her deceased husband. Said deeds and each and all of the same are hereby approved.

Encumbrance Estimate No. 669, which has likewise been submitted to me in connection with the proposed purchase of the interests here in question, has been properly executed and the same shows that there is an unincumbered balance in the appropriation account sufficient in amount to pay the purchase price of the property and interest here in question, which purchase price is the sum of \$54,822.67. Said encumbrance estimate is likewise approved by me.

I am herewith enclosing said abstract of title, the deed of the Huntington National Bank of Columbus, trustee, the deed of said Nellie W. Campbell, and encumbrance estimate No. 669, above referred to.

As above indicated, I have examined the deed executed by the Broad-Front Realty Company, conveying and releasing its interest in this property. I am advised, however, that this deed is now in the possession of the Broad-Front Realty Company or its attorney and that the same will be delivered to the State of Ohio, through you, when the transaction relating to the purchase of the estate and interests in the above described property is closed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3210.

BOARD OF EDUCATION—RURAL SCHOOL DISTRICT—POWER TO PAY
TUITION OF ELEMENTARY SCHOOL PUPILS, WHO HAVE FAILED
TO RECEIVE CERTIFICATE OF PROMOTION, IN NEARBY VIL-
LAGE HIGH SCHOOL.

SYLLABUS:

Where a pupil residing in a school district which does not maintain a high school, fails to receive a certificate of promotion to a high school after taking the courses in the elementary schools, but is permitted with the acquiescence of the county superintendent of schools and all the school authorities, to attend a high school in another district and there make up the courses of study in which he had failed in the elementary schools, the board of education of the district of his residence may, but is not required to pay his tuition in the school which he attends.

COLUMBUS, OHIO, May 11, 1931.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

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

“Certain pupils in the Twin Township Rural School District having failed to pass the necessary elementary examination during the Spring of 1930, were denied a certificate by the County Superintendent, by reason of their said failure. Rather than return to their local school for the current year, their parents sent them to The Arcanum Village Schools where they are taking the one course in arithmetic in which they failed during the preceding year and are taking three high school branches in the Arcanum schools.

The question now is, has the Board of Education of the Twin Township Rural School District the authority to pay the tuition of these pupils for their work in the Arcanum Village High School to the Board of Education of the Arcanum Village Schools?”

I understand that Twin Township Rural School District does not maintain a high school, and that the high school maintained by the board of education of the Arcanum Village School District is available for high school pupils who reside in the Twin Township District and many of those pupils attend the Arcanum High School.

It is the purpose of the law that school districts which do not maintain high schools should bear the cost of the attendance of resident pupils in other high schools. All youths are entitled to the advantages of a high school education at public expense, whether they reside in districts maintaining such schools or not, and it is clearly the intention of the law that all such youths shall attend high school.

The school age fixed by the compulsory school law, is from six to eighteen years, although the schools of each district are free to resident pupils until they reach twenty-one years of age. Normally, barring failures and demotions, a child will have completed the regularly prescribed course of study for both the elementary and high schools within the years prescribed by the compulsory school law. This fact clearly justifies the conclusion that the intent of the law is to require pupils to pursue their studies through the high school courses and clearly imports the intention of the law to be that the cost of the schooling should be borne from public school funds. Specific statutory provisions to that end are contained in Sections 7747 and 7748 of the General Code. It is also provided in said Section 7747, General Code, that a pupil who has completed the elementary school work is entitled to a certificate to that effect which certificate entitles him to admission to any high school in the state. These provisions are as follows:

“The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. * * * *

The district superintendent shall certify to the county superintendent each year the names of all pupils in his supervision district who have completed the elementary school work and are eligible for admission to high school. The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion which shall entitle the holder

to admission to any high school. Such certificate shall be furnished by the superintendent of public instruction."

In a rural school district the determination of whether or not a pupil is entitled to a certificate of promotion lies with the county superintendent of schools or an assistant county superintendent of schools. So far as the law is concerned a great deal of discretion in the matter is vested in the county superintendent or his assistant. The law does not lay down any hard and fast rules governing the promotion of pupils. Courses of study are provided for elementary schools and when a pupil has completed these courses he is entitled as a matter of right, to a certificate of promotion to high school. Strictly speaking, the superintendent is not authorized to issue such a certificate until the pupil has "completed the elementary school work." As to when he has completed this work is for the superintendent or his assistants to determine within their sound discretion.

It has been the practice, however, for many years, to issue provisional certificates of promotion, or as it is sometimes expressed, to promote the pupil conditionally, that is, to require him to make up one or more studies in which he has failed or in which his work has not been as efficient as it should have been, and permit him while making up this work to go on with the courses provided for the next grade. Sometimes the pupil is permitted to make up this work by private tutoring. This is often done in all the grades, both in the grade schools and in the high schools, and there is no particular reason why it may not be done in passing from the last grade in elementary school to the first grade in high school, when in the sound discretion of the promoting authority it is for the best interests of all concerned. There is no specific statutory or other authority for doing this, but it is constantly done and has been for a great many years, until it may now be looked upon as a regular practice in school administration.

I believe it will be agreed that in most cases such action is conducive to the best interests of both the pupil and the schools. If the pupil is held back simply because he is deficient in one or two subjects and is compelled to take the entire grade over, instead of being given the opportunity to make it up and go forward at the same time with the courses provided for the next grade, the district is obligated to meet the expense of his schooling a year or at least part of a year longer than it otherwise would be. The pupil himself is apt to become discouraged if held back, and is especially apt to feel that he is being unduly penalized if he falls short of being promoted to such slight extent as could easily be made up while taking the next grade. Besides, the breaking off of the class associations of the pupil which results when he fails of promotion oftentimes has a bad effect on the pupil's school work and oftentimes the placing of older pupils in a class does not have a good effect, to say the least, on the morale of the class. Taking it all in all, it would appear to be to the best interests of both the pupils and the public to permit pupils to go forward to the next school grade when only slight deficiencies in their school work, which may easily be made up, prevent them from receiving a certificate showing that they have completed the work of a particular grade.

It should be noted in this connection that when a school district is required to pay the tuition of a pupil attending high school in another district, it is not required to pay that tuition "for more than four school years." Section 7748, General Code.

It appears from your statement that the pupil in question was not granted a certificate of promotion; and it does not appear that he was promoted upon con-

dition, and undoubtedly the Arcanum Board of Education for that reason would not have been required to admit him to its high school. He was admitted, however, and permitted, if not with the consent of the county superintendent, at least with his acquiescence as well as the acquiescence of all the school authorities in both districts, to attend the high school in Arcanum District and to there make up the courses of study which he had not passed in the elementary school. I see no reason why the Twin Township District may not pay his tuition if it sees fit to do so. I have some doubts as to whether the Arcanum District could require the Twin Township District to pay this tuition. That question is not presented here, as I understand the Twin Township District is willing to pay the tuition and the only question is whether or not it may lawfully do so.

If the pupil had not been allowed to attend the Arcanum High School, but had been required to spend another year or part of a year, in the Twin Township schools, the Twin Township District would have been at the expense of carrying this pupil for a year or a part of a year in its elementary schools, and still would be obligated to pay tuition for four years schooling in a high school. This way, if this year's high school tuition is paid in the Arcanum Schools, Twin Township can not be required to pay high school tuition for the pupil for more than three additional years. So that in the long run the district loses nothing financially, and in fact saves the cost of the pupils' schooling in its schools for at least a part of a year which would necessarily have accrued if the pupil had been required to make up his elementary school work in its schools.

While there is probably no legal obligation on the part of the Twin Township District to pay this tuition to the Arcanum District, and the Arcanum District could probably not enforce collection, yet clearly, in my opinion, a moral obligation exists which it is within the power of the Twin Township District to pay, and it may be paid.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3211.

EXPENSES—OF PRISONERS HELD IN CITY WORKHOUSE FOR TRIAL
FOR VIOLATION OF STATUTE—BORNE BY SAID CITY.

SYLLABUS:

The expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality.

COLUMBUS, OHIO, May 11, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads as follows:

“In a city containing a workhouse, wherein prisoners committed on