

The transcript does not contain any evidence that the property owners have been notified of the filing of the assessments as levied in section 3895 G. C. This section provides as follows:

“Before adopting the assessment made as provided in this chapter, the council shall publish notice for three weeks consecutively, in a newspaper of general circulation in the corporation, that such assessment has been made, and that it is on file in the office of the clerk for the inspection and examination of persons interested therein.”

Upon request that affidavit of the publication of this notice be furnished as required by law, this department is now advised that no such publication of the notice has been given.

Since the amendment of section 3914, G. C., as found in 110 O. L., page 458, such bonds can only be issued in anticipation of the collection of special assessments.

I am therefore of the opinion that any failure to comply with statutory requirements in providing for such assessments will endanger the validity of the bonds, for the reason that such bonds could not be issued in anticipation of assessments that have not been legally made.

You are therefore advised not to accept these bonds because of this statutory failure in giving notice to the property owners.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

2533.

SCHOOLS—PAYMENT OF TUITION OF GRADUATES OF SECOND  
GRADE HIGH SCHOOL—SECTION 7748 G. C. CONSTRUED.

SYLLABUS:

*The term “graduate” as used in section 7748, General Code, in the phrase “a board of education providing a second grade high school shall pay the tuition of graduates residing in the district at any first grade high school for one year” should not be restricted to graduates of the second grade high school maintained in said district, but may include pupils who have completed the work of a second grade high school or the equivalent thereof, but who may have not at any time attended the second grade high school of the district of their residence.*

COLUMBUS, OHIO, June 3, 1925.

HON. PETER P. BOLI, *Prosecuting Attorney, Hamilton, Ohio.*

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

“Is a child residing in Milford township rural school district which maintains a second grade high school but which school said child has never attended, having attended Hamilton high school during the last three years, and who is now eligible for his fourth year of high school, entitled

to have his tuition to Hamilton high school for such fourth year paid by the Milford township rural school district."

Your inquiry involves sections 7747 and 7748, General Code of Ohio. That part of section 7747 pertinent to your inquiry, reads 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."

That part of section 7748, General Code, pertinent to your inquiry reads as follows:

"A board of education providing a third grade high school as defined by law shall be required to pay the tuition of graduates from such school residing in the district at any first grade high school for two years, or at a second grade high school for one year. Should pupils residing in the district prefer not to attend such third grade high school, the board of education of such district shall be required to pay the tuition of such pupils at any first grade high school for four years, or at any second grade high school for three years and a first grade high school for one year. Such a board providing a second grade high school as defined by law shall pay the tuition of graduates residing in the district at any first grade high school for one year; except that, a board maintaining a second or third grade high school is not required to pay such tuition when the maximum levy permitted by law, for such district has been reached and all the funds so raised are necessary for the support of the schools of such district."

Re-stating in abbreviated form a part of the above section, it will read as follows:

"A board of education providing a second grade high school shall pay the tuition of graduates residing in the district at any first grade high school for one year."

Examination of this language, together with the provisions of section 7747, supra, clearly reveals the obligation of a board of education which maintains only a second grade or a three year high school, to furnish an additional year of high school work for "graduates residing in the district."

Obviously, the term "graduates" as used above, means those pupils who have finished the work of a second grade high school, or the equivalent thereof, and in order that all cases that fairly come within this provision may be provided for, cannot be restricted to graduates of the particular second grade high school of the district of the residence of such graduates.

A child living in B district may have finished in June, 1924, the work of the second grade high school maintained in such district and before the opening of school in the fall of 1924 may have taken up residence in C district, which also maintains a second grade high school, but which said child has never attended. Notwithstanding this fact the board of education of C district would be obliged to furnish such child school privileges, including that provided in section 7748, General Code, supra, to wit, payment of tuition for a fourth year in a first grade high school.

Another instance requiring the above interpretation in order to carry out the clear intent of the provisions of section 7748, General Code, might arise in a district when first establishing a second grade high school, and in which district reside children of school age who have of necessity finished the work of a second grade high school outside the district of their residence, and are therefore entitled to have their tuition paid for an additional year in a first grade high school.

Therefore, I am of the opinion that the term "graduate" as used in section 7748, General Code, in the phrase "a board of education providing a second grade high school shall pay the tuition of graduates residing in the district at any first grade high school for one year" should not be restricted to graduates of the second grade high school maintained in said district, but may include pupils who have completed the work of a second grade high school or the equivalent thereof, but who may have not at any time attended the second grade high school of the district of their residence, and in the instant case the board of education of the Milford township rural school district should pay the tuition of the pupil in question for his fourth year in the Hamilton high school.

Respectfully,

C. C. CRABBE,

*Attorney General.*

2534.

JURY FEES IN CONDEMNATION PROCEEDINGS—PROBATE JUDGE  
NOT ENTITLED TO FEE OF FIVE DOLLARS AS PROVIDED IN SECTION 11089 G. C.

*SYLLABUS:*

1. *Jury fees should not be taxed against the board of education as part of the costs in a condemnation proceeding, but should be certified and paid as regular jury fees are paid in the common pleas court.*

2. *A probate judge is not entitled to a fee of five dollars per day as provided in section 11089, General Code.*

COLUMBUS, OHIO, June 3, 1925.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnelsville, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In a proceeding by the board of education under section 7624 G. C. to appropriate land for sewage disposal purposes which goes to final judgment and a verdict for both compensation for the land taken and damages to the residue is returned by the jury in the probate court and neither party desiring to proceed further and the plaintiff taking the property, when it comes to the matter of taxing costs should the jury fees be by the court taxed against the board of education or certified and paid as regular jury fees are paid, by the county, in the court of common pleas in other cases?

"In such proceedings is the probate judge entitled to a fee of five dollars per day as provided in section 11089 G. C. relating to appropriation proceedings by private corporations?"