

-----; that he is one of the sureties who signed the above bond; that a true and correct financial statement showing the amount and specific character of his assets and liabilities is as follows:

ASSETS

LIABILITIES

and that said statement of liabilities includes his contingent liabilities as surety or otherwise.

Sworn to and subscribed in my presence this-----day of-----, 19-----.

SEAL

(Notary Public)

-----County, Ohio.

JUSTIFICATION OF SURETIES

STATE OF OHIO

County of-----

-----, being first duly sworn, says that he resides in the State of Ohio and that his postoffice address is-----; that he is one of the sureties who signed the above bond; that a true and correct financial statement showing the amount and specific character of his assets and liabilities is as follows:

ASSETS

LIABILITIES

and that said statement of liabilities includes his contingent liabilities as surety or otherwise.

Sworn to and subscribed in my presence this-----day of-----, 19-----.

SEAL

(Notary Public)

-----County, Ohio.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1159.

BOARD OF EDUCATION—MUST FURNISH TRANSPORTATION TO ELEMENTARY PUPILS IN MANNER PROVIDED BY STATUTES OR PAY OTHERS TO DO SO—SPECIFIC CASE.

SYLLABUS:

1. A board of education is required to furnish transportation for all elementary school pupils who live more than two miles from the school to which they have been assigned. In furnishing such transportation the board is required to cause the school

conveyance to pass within one-half mile of the residence of each of the school pupils to be transported, or the private entrance to such residence, or may be made to respond for the reasonable value of such transportation in accordance with Section 7731-4, General Code, if the parent or person in charge of such child, furnishes the transportation.

2. *If a board of education determines that it is impracticable and unnecessary to operate a school bus to within one-half mile of the residence of a school pupil who is entitled to transportation to school, or the private entrance to such residence, the board cannot be compelled in an action in mandamus to operate the bus to within such one-half mile of the residence of the pupil, or the private entrance thereto, but unless the school conveyance is operated to within one-half mile of the residence of a school pupil, or the private entrance thereto, transportation as contemplated by the law is not being furnished.*

COLUMBUS, OHIO, November 7, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Mr. T. resides in Whetstone Township, Crawford County, Ohio. Mr. T. is the father of a boy of legal school age. The school district in which Mr. T. resides has been centralized. The children of the entire school district are transported to this central school by various busses routed by the board of education. All the one room schoolhouses in the district have been abandoned. The T. family resides more than one-half mile from the main highway over which the bus passes. The road leading to the T. home is passable most of the school year.

First. Is the board of education of Whetstone Township legally required to give additional consideration to the T. child by a nearer approach to their home?

Second. Is it within Mr. T.'s right to sue the board of education of Whetstone Township for such transportation costs?”

I am informed that Mr. T., the man referred to in your letter, lives more than two miles from the school to which his son has been assigned. A private road or lane extends from his residence a distance of about one-fourth of a mile to the public highway. The public highway to which this lane extends is an unimproved dirt road and is practically impassable at times for a school bus, although most of the time a light machine might be operated over it. This unimproved dirt road leads from one hard surfaced road to another, over each of which is operated a school bus by the board of education of Whetstone Township for the transportation of the pupils of the district. The distance from the end of the private lane that leads to Mr. T.'s house, over the unimproved dirt road, to either of the hard surfaced roads mentioned is approximately one mile.

On account of the condition of the dirt road leading from the end of the lane spoken of to the improved roads during a part of the year, the board of education of Whetstone Township rural school district has formally determined that transportation within a distance of one-half mile of the private entrance to the residence of Mr. T. is unnecessary and impracticable, and the school conveyance is made to pass along and over the improved roads approximately one mile from where the lane leading from Mr. T.'s residence intersects the unimproved dirt road referred to.

Section 7731, General Code, the terms of which are applicable to this situation, reads as follows:

"In all city, exempted village, rural and village 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 school district of the county school district, by the judgment of the county board of education, or, in the case of a city or exempted village school district, by the judgment of the probate judge, such transportation is unnecessary.

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 and it must pass within one-half mile of the residence of such pupils or the private entrance thereto, unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable. When local boards of education neglect or refuse to provide transportation for pupils the county board of education may provide such transportation and the cost thereof shall be paid as provided in Section 7610-1, General Code."

Prior to the amendment of Section 7731, General Code, in 1917, it was provided thereby that "when transportation of pupils is provided, the conveyance must pass within one-half mile of the respective residences of all pupils, except when such residences are situated more than one-half mile from the public road." The provision above quoted had been in force since the adoption of the school code of 1904, (Sec. 3922, Revised Statutes 97 O. L. 344) although Section 3922, Revised Statutes, was amended with reference to other matters contained therein in 1908 (99 O. L. 203), and, after being codified in 1910 as Section 7731, General Code, was again amended in some respects in 1914 (104 O. L. 143).

In 1917 said Section 7731, General Code, was amended (107 O. L. 621) and the language "except when such residences are situated more than one-half mile from the public road" was changed to read "or the private entrance thereto." This provision of the statute as contained in the amendment of 1917, was retained in subsequent amendments of the statute in 1921 (109 O. L. 289) and in 1925 (111 O. L. 123).

In the light of the history of Section 7731, General Code, as stated above, it seems clear that since 1917, the provision of the statute that when transportation is furnished the conveyance must pass within one-half mile of the residence of a pupil or the private entrance thereto, means that the conveyance must be operated within at least one-half mile of where the private entrance to the residence or the lane or private way leading to the same meets the public highway, else transportation is not being furnished as required by law.

In other words, the lane itself is not considered as being a part of the one-half mile and no matter how long the lane or private way is, if the school conveyance is operated to within one-half mile of where the lane meets the public highway, such operation of the bus is sufficient and if so operated, transportation is being furnished as required by law.

In 1925 (111 O. L. 123) there first appears in the statute the clause "unless the board of education determines that transportation within said distance of one-half mile of said residence or the private entrance thereto is unnecessary and impracticable."

I had occasion to construe the terms of Section 7731, General Code, in a recent opinion rendered by me on October 17, 1929, and addressed to the prosecuting attorney of Morgan County, in which I held:

"1. Transportation to and from school must be furnished for elementary

school pupils who reside more than two miles from the school to which they are assigned, or the parents or persons in charge of such pupils paid for transporting them.

2. The law requiring transportation to and from school, of elementary school pupils who reside more than two miles from the school to which they are assigned, is satisfied if the conveyance is made to run within one-half mile of a pupil's residence or the private entrance thereto.

3. If a conveyance for the transportation of elementary school pupils to and from the school is not made to run within one-half mile of the residence, or the private entrance thereto of a pupil who lives more than two miles from the school to which he has been assigned, transportation, in the sense contemplated, is not being furnished, and the parent or person in charge of the pupil may furnish transportation for the pupil, and recover from the board of education for such transportation in accordance with Section 7731-4 of the General Code."

Without repeating the reasons for the conclusions reached in the aforesaid opinion, it is sufficient to say that in my opinion those conclusions are applicable to the instant case and that while the board of education of Whetstone Township could not be compelled by an action in mandamus to operate the school conveyance to within one-half mile of the private entrance to Mr. T.'s residence, inasmuch as the board has determined it to be impracticable and unnecessary to do so, yet if the bus is not operated so as to pass within one-half mile of the private entrance to Mr. T.'s residence, his child is not being transported in the manner contemplated by law.

Under those circumstances it is my opinion that the board of education of Whetstone Township must either cause the school conveyance to pass within one-half mile of the private entrance to Mr. T.'s residence, or pay Mr. T. for the transportation of his child, a rate determined for the particular case for each day of actual transportation in accordance with Section 7731-4, General Code.

In specific answer to your questions, therefore, I am of the opinion:

1. The board of education of Whetstone Township is required to furnish transportation for the child in question by causing the school conveyance to be operated within one-half mile of the private entrance to the residence of the child's parents, or pay the child's parents for transporting the child in the manner provided for in Section 7731-4, General Code.

2. If the board of education does neither of the things which it is required to do as stated in the answer to question (1) above, Mr. T., if he transports his child to school, may recover from the board of education the reasonable value of such transportation upon proof of the board's knowledge of the situation and its failure to furnish transportation according to law, and the further showing of the actual transportation furnished by the parent for the child.

Respectfully,

GILBERT BETTMAN,
Attorney General.