

## OPINION NO. 73-046

## Syllabus:

The county board of education is required to pay for the annual physical examination of public school bus drivers under R.C. 3327.10 (A).

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To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, May 14, 1973

I have before me your request for my opinion, which reads as follows:

Section 3327.10 (A), Revised Code, as it relates to qualifications of a bus driver for a local board of education, provides in part that, "The county board or the superintendent as the case may be, shall provide for an annual physical examination that conforms with regulations adopted by the state board of education of each driver to ascertain his physical fitness for such employment."

Inasmuch as the county board of education or the superintendent is mandated by statute to provide for the physical examination, is the county board of education mandated to pay the costs of the physical examination or must the costs be borne by 1.) the local school district; 2.) the individual being examined?

Your question asks whether the individual school bus driver, the local school district, or the county board of education is to pay for the medical examination of individuals desiring to drive a school bus for a local school district.

Provision for the qualification of a school bus driver is made by R.C. 3327.10, which reads in pertinent part as follows:

(A) No person shall be employed as a driver of a school bus or motor van, owned and operated by any school district or privately owned and operated under contract with any school district in this state, who has not received a certificate from the county board of education of the county in which he is to be employed, in case such person is employed by a school district under the supervision of the county board, or by the superintendent of schools, in case such person is employed by the board of a city or exempted village school district, certifying that such

person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position.

The county board or the superintendent, as the case may be, shall provide for an annual physical examination that conforms with regulations adopted by the state board of education of each driver to ascertain his physical fitness for such employment. Any certificate may be revoked by the authority granting the same on proof that the holder has been guilty of improper conduct, failing to file all traffic convictions with the county board or the superintendent, or neglect of duty and the said driver's contract shall be thereby terminated and rendered void.

(Emphasis added.)

I agree with your conclusion that the use of the word "shall," in the above italicized passage, indicates that the county board, or the city superintendent, has a mandatory duty to see to it that school bus drivers take an annual physical examination. The question is the scope of the statutory term, "provide for." Does it mean that the county board must pay for the examination, or simply make sure that an examination is held?

That term has many possible meanings. This is evident from the statement in Taylor v. Elder, 39 Ohio St. 535, 539 (1883), that "[t]he words 'provide for', are capable of a very broad, or a very narrow, signification." In another case, In re Neff, 6 Ohio Op. 2d 287, 289 (1957), the court said:

The word "provide," according to Webster's New International Dictionary, Second Edition, means "to look out for in advance; to procure beforehand; to prepare for the future; to supply what is needed for sustenance or support."

A New York court, in Austin v. Bridges, 34 N.Y.S. 2d 3, 7 (1941), explained one of these several meanings as follows:

\* \* \* one may "provide" for an event happening without necessarily supplying the physical means to insure its occurrence or success. This in the sense that one may provide for something by merely agreeing that it may or shall be done. Literally, the word's Latin forbear, provides, signified only "to see before."

Whether the phrase should be given this latter narrow reading here, or whether it should be read more broadly to include payment of the cost of the examination, depends, in view of its inherent ambiguity, on the statutory context in which it appears. Trust Co. v. Evatt, 145 Ohio St. 160, 168-169 (1945); R.C. 1.42.

What is now R.C. 3327.10 (A) was first enacted by the General Assembly in 1921 as G.C. 7731-3 (109 Ohio Laws, 289-290), which provided that no one should be employed as a school bus driver unless he had given bond, and the county board of education had certified,

\* \* \* that such person is at least eighteen years of age and is of good moral character and is qualified for such position. \* \* \*

G.C. 7731-3 at that time contained no provision for a physical examination.

That provision first appeared in 1935 when the General Assembly amended G.C. 7731-3. 116 Ohio Laws, 503-504. The county board of education was now required to certify,

\* \* \* that such person is at least twenty-one years of age and is of good moral character and is qualified physically and otherwise for such position.

(Emphasis added.)

The amendment then added the following sentence:

\* \* \* The local board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for the employment; said board or superintendent shall choose the examining physician; and, said examination shall be the only one necessary for a driver to pass.

\* \* \* (Emphasis added.)

In 1943 there was a complete recodification and revision of the school laws. 120 Ohio Laws, 475-611. G.C. 7731-3 was repealed and replaced by G.C. 4855-7. 120 Ohio Laws, 587, 609-611. The new Section was practically the same as the one which was repealed. There was, however, one significant change. The new Section provided:

\* \* \* The county board of education or the superintendent, as the case may be, shall provide for a physical examination of each driver to ascertain his physical fitness for such employment. \* \* \* (Emphasis added.)

In addition, the amendment dropped the language requiring the local board to choose the examining physician and making that examination the only one necessary.

G.C. 4855-7 has now been replaced by R.C. 3327.10. The pertinent language of subsection (A), with some slight amendments adopted in 1963 (130 Ohio Laws, 764), now provides:

\* \* \* The county board or the superintendent, as the case may be, shall provide for an annual physical examination that conforms with regulations adopted by the state board of education of each driver to ascertain his physical fitness for such employment. \* \* \*

In view of this history of the Section, what meaning can be read into its ambiguous language? The original requirement for a physical examination in 1935 directed the local board of education to "provide for" such examination and to choose the physician. I think the more reasonable interpretation of this

combination of requirements is that the General Assembly intended that the local board should pay for the examination. It is true that the restriction as to choice of the physician was dropped in 1943, but at the same time the General Assembly directed the county board to "provide for" the examination. If "provide for" meant "pay for" in 1935, the fact that the same term was retained in 1943 indicates that it was used in the same sense. If the General Assembly had intended a change, it would certainly have used different language. This interpretation is supported by the significantly different language of P.C. 3327.10 (B), which controls the qualifications of non-public school bus drivers. That subsection requires that the non-public school administrator, or the person who contracts to provide the bus service, shall certify that each driver is twenty-one years of age, of good moral character, and physically or otherwise qualified. It also provides that each driver shall have an annual physical examination, but without specifying by whom it shall be provided. In pertinent part the subsection reads:

\* \* \* Every driver shall have an annual physical examination which conforms to the state highway patrol regulations, ascertaining his physical fitness for such employment. \* \* \*  
(Emphasis added.)

I conclude, therefore, that, under the language of R.C. 3327.10 (A), the county board of education is required to pay the costs of the annual physical examination for a public school bus driver.

This seems to be the interpretation followed by the Department of Education. In a letter to the Superintendent of the Clermont County Board of Education, dated February 18, 1971, the Department said in part:

The state advisory committee on Pupil Transportation Laws and Regulations, which is composed of various county, city and exempted village superintendents as well as traffic and safety experts, considered the wording of Section 3327.10 of the Ohio Revised Code very carefully and decided that the law places the responsibility of payment of bus drivers physicals directly upon the "County Board of Education or City and Exempted Village Superintendents".

We are aware that this practice is not being completely adhered to throughout the state; however, this does not change the interpretation of the law as determined by the advisory committee.

See also Drury, Ohio School Laws, Text, Section 7.25, and Spayde, Ohio School Laws, Section 97.15.

The same interpretation appears in a letter from the Deputy Auditor to an examiner in the School Division, dated August 31, 1965, which states in part:

In accordance with the foregoing, it is the duty of the county board of education to provide for the physical examination of each

driver to ascertain his physical fitness for such employment. The cost of such physical examination should be paid from the county board of education funds. The statute in no way imposes upon local boards of education the responsibility for paying these costs.

The interpretation of the administrators of a law is, of course, entitled to considerable weight where the language of the statute is ambiguous. In State, ex rel. Automobile Machine Co. v. Brown, 121 Ohio St. 73, 75-76 (1929), the Court said:

It has been held in this state that "administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do." Industrial Commission v. Brown, 92 Ohio St., 309, 311, 110 N.E. 744, 745 (L.R.A., 1916B, 1277). See, also, 36 Cyc., 1140, and 25 Ruling Case Law, 1043, and cases cited.

In specific answer to your question it is my opinion and you are so advised, that the county board of education is required to pay for the annual physical examination of public school bus drivers under R.C. 3327.10 (A).