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1. BOARD OF EDUCATION — NOT EMPOWERED TO DISCONTINUE ANY OR ALL SCHOOLS IN DISTRICT UNLESS PROVISION MADE FOR PUPILS TO ATTEND SCHOOL, FULL TIME, EACH SCHOOL YEAR UNDER PROVISION OF LAW — NO CHILD OF COMPULSORY SCHOOL AGE SHALL BE DEPRIVED OF SCHOOL PRIVILEGES OFFERED TO ALL YOUTH OF STATE UNDER GENERAL SCHOOL LAW.
2. RURAL OR VILLAGE SCHOOL DISTRICT — BOARD MAY SUSPEND SCHOOL IF SCHOOL BUILDING UNFIT, NOT SUITABLE FOR SCHOOL PURPOSES — BOARD UNABLE TO COMPLY WITH ORDER, STATE DEPARTMENT OF INDUSTRIAL RELATIONS — SECTION 7730 G.C.
3. WHERE SCHOOL SUSPENDED, BOARD SHALL PROVIDE FOR ASSIGNMENT OF PUPILS TO OTHER SCHOOLS AND PROVIDE FOR TRANSPORTATION.
4. TEACHERS — CONTRACTS MUST BE GIVEN CONSIDERATION WHERE SCHOOL SUSPENDED — SECTION 7690-7 G. C. — SUSPENSION — REINSTATEMENT OF SUCH TEACHERS.

**SYLLABUS:**

1. Under no circumstances is a board of education empowered to discontinue any or all schools in its district unless provision is made whereby the school pupils who normally would attend such school or schools are offered the opportunity to go to school for the full time in each school year for which the law makes provision, to the end that no child of compulsory school age would be deprived of the school privileges offered to all the youth of the state under the general school law.

2. A board of education in a rural or village school district may suspend any school in the district by favor of Section 7730, General Code, if circumstances are such that the school building is in such a state of repair that it is not suitable for school purposes and the board is unable to comply with an order of the State Department of Industrial Relations to restore the same so as to make it properly available for the purpose for which it is intended.

3. When a board of education suspends a school by authority of Section 7730, General Code, the board shall at once provide for the assignment of the pupils residing within the territory of the suspended school to other schools and provide for their transportation to school as provided by law.

4. In the event a school is suspended by authority of Section 7730, General Code, consideration must be given in the suspension of contracts of teachers affected by such suspension of the school, to the provisions of Section 7690-7 of the General Code of Ohio, with respect to the suspension and reinstatement of such teachers.

Columbus, Ohio, December 31, 1942.

Hon. Leo E. Carter, Prosecuting Attorney,  
Caldwell, Ohio.

Dear Sir:

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

“Where a board of education has been in process of building a new school building for a long period of time and not at present completed and because of this and the condemnation of the schoolrooms now occupied by the State Building Inspector, can the board of education order the school closed and release teachers effective at once who have a continuing contract and discontinue that school for the remainder of the school year under G. C. 7730 or any other statute without first providing for the schooling of the children and the honoring of the teachers’ contract?”

Your inquiry does not disclose whether the school you mention is an elementary school or a high school or a joint grade and high school maintained in the same building, nor does it appear whether or not the school in question is the only school in the district.

By the terms of Section 7644, General Code, it is made the mandatory duty of boards of education to maintain elementary schools for a period of not less than thirty-two weeks in each school year. Said section reads as follows:

“Each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Every elementary day school so established shall continue not less than thirty-two nor more than forty weeks in each school year. All the elementary schools within the same school district shall be so continued.”

The mandatory provisions of the above statute with respect to the maintenance of elementary schools are modified somewhat by Section 7734, General Code, which provides that the board of education of any

district may contract with the board of another district for the admission and transportation of pupils into any school of such other district on terms agreed upon by the school boards within the limitations of law. Neither is it necessary if a board of education does not contract for the admission of its residential pupils into the schools of another district, that the board maintain schools in its own district in buildings owned by the board. Express authority is extended to boards of education by Section 7620, General Code, to rent suitable schoolrooms either within or without its district.

There is no express statutory provision so forthright as to the duty of a board of education to maintain high schools as that contained in Section 7744, General Code with respect to elementary schools. It is generally recognized, however, that high school advantages must be provided for children of compulsory school age who have completed the work offered by an elementary school. An examination of the various provisions of the statutes with respect to the maintenance of high schools and the payment of tuition in high schools when the district of residence of such pupils does not afford high school advantages within the district, together with those providing for transportation of pupils to high schools leads to the conclusion that a board of education must either maintain a high school for its resident pupils eligible to attend such a school or provide high school advantages outside the district by the payment of tuition and in some instances transportation to such school. In Ohio Jurisprudence, Volume 36, page 52 it is said:

“Formerly, it was held that there was no mandatory duty on the part of the board of education to establish a high school. It now appears to be the evident intention of the legislature, as revealed by school legislation, that every child in Ohio who has completed the elementary school work shall be provided with high school advantages. Since high school teaching is established in the schools of Ohio by the state for all the children of the state and children of school age who have finished the elementary schools are required by law to continue their schooling, a child who is not afforded the opportunity to study high school branches is being denied some of the school privileges offered to all the youth of the state under the general school law.”

In addition to the power of a board of education to contract with another board for the admission of its resident pupils into the schools of another district where such action becomes advisable or necessary, school advantages may be afforded for such pupils by favor of Section 7764,

General Code, which provides in substance that pupils are subject to assignment to other schools either within the district or without the district if the schooling is not available within the district provided the child's tuition is paid and transportation furnished as provided by the statute.

It clearly appears, in my opinion, that a board of education is not justified in simply discontinuing any or all the schools under its jurisdiction unless provision is made whereby its resident pupils may be provided with proper school privileges, as ample provision is made whereby the pupils may be furnished with those school privileges even though no school building owned by the board is available in the district for that purpose. If such a situation should come about and suitable school rooms cannot be rented school facilities must be afforded in accordance with the law, outside the district.

If the school building you mention is maintained by a rural or village board of education and cannot be used because of its unsuitability the school which had been maintained therein may be suspended as provided by Section 7730, General Code. The Supreme Court of Ohio, in the case of Board of Education v. Waits, 119 O.S., 310, expressly held that "inability to comply with an order of the State Department of Industrial Relations may be a valid cause for suspension" under this statute. When schools are suspended under and by virtue of said Section 7730, General Code, it is necessary under the express terms of the statute that the pupils be assigned to other schools and that transportation be furnished to school. The statute provides also that when a school is suspended by authority thereof, contracts of teachers shall thereby be terminated. This provision of the statute, however, must be applied in accordance with later provisions of law dealing with the subject of termination of teachers' contracts. Any teacher affected by an order of suspension made by authority of Section 7730, General Code, who holds a continuing contract would not have his contract terminated merely by reason of such suspension of the schools. Under the terms of Section 7690-1, General Code, enacted in 1941, it is expressly provided that continuing contracts with teachers shall remain in full force and effect until the teacher resigns, elects to retire or is retired pursuant to Section 7896-34 of the General Code, or until it is terminated or suspended as provided by the Act of the General Assembly authorizing the entering into of such continuing contracts. Section 7690-6, General

Code, which is contained in the Act of the General Assembly mentioned, provides the only method for the termination of a continuing contract with a teacher, other than by resignation and retirement, and does not provide for such termination upon the suspension of a school in which the teacher may be teaching. It does provide, however, in Section 7690-7, General Code, for the suspension of continuing contracts with teachers under some circumstances. When a school is suspended by authority of Section 7730, General Code, consideration must be given to the provisions of law contained in Section 7690-7, General Code, with respect to the suspension of contracts with teachers who are affected by such suspension. This statute reads as follows:

“When by reason of decreased enrollment of pupils, or by reason of suspension of schools or territorial changes affecting the district, a board of education decides that it will be necessary to reduce the number of teachers, it shall have full authority to make reasonable reduction. But, in making such reduction, the board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who shall, within each teaching field affected, give preference to teachers on continuing contracts and to teachers who have greater seniority. Teachers whose continuing contracts are suspended shall have the right of restoration to continuing service status in the order of seniority of service in the district if and when teaching positions become vacant or are created for which any of such teachers are or become qualified.”

I am of the opinion:

1. Under no circumstances is a board of education empowered to discontinue any or all schools in its district unless provision is made whereby the school pupils who normally would attend such school or schools are afforded the opportunity to go to school for the full time in each school year for which the law makes provision, to the end that no child of compulsory school age would be deprived of the school privileges offered to all the youth of the State under the general school law.

2. A board of education in a rural or village school district may suspend any school in the district by favor of Section 7730, General Code, if circumstances are such that the school building is in such a state of repair that it is not suitable for school purposes and the board is unable to comply with an order of the State Department of Industrial

Relations to restore the same so as to make it properly available for the purpose for which it is intended.

3. When a board of education suspends a school by authority of Section 7730, General Code, the board shall at once provide for the assignment of the pupils residing within the territory of the suspended school to other schools and provide for their transportation to school as provided by law.

4. In the event a school is suspended by authority of Section 7730, General Code, consideration must be given in the suspension of contracts of teachers affected by such suspension of the school, to the provisions of Section 7690-7, of the General Code of Ohio, with respect to the suspension and reinstatement of such teachers.

Respectfully,

THOMAS J. HERBERT  
Attorney General.