

2. A foreign manufacturing corporation which maintains a quantity of its products in public warehouses in this state from which it fills orders which it receives at the home office from soliciting agents in this state after they have been confirmed by it, is to such extent doing business within this state within the purview of the Foreign Corporation Act (§§8625-1 to 8625-33, both inclusive, General Code.)

3. Where a foreign corporation for a period of ten years has maintained in a warehouse in this state quantities of its products for the purpose of filling orders of its customers within the state, such corporation should be considered as doing business within this state for the purposes of the Foreign Corporation Act (§§8625-1 to 8625-33, both inclusive, General Code), even though annual contracts are solicited by its agents requiring them to purchase a minimum amount of such products, and even though a portion of its orders are filled by shipments in interstate commerce.

4. When a foreign corporation maintains a warehouse in Ohio, from which it fills orders:

- (a) Solicited by salesmen in Ohio and sent direct to the warehouse, or
- (b) Solicited by salesmen in this state, which are subject to confirmation at the home office, or

(c) Which the customer in Ohio sends direct to the home office, such corporation should be considered as doing business within the state for the purposes of qualification under the Foreign Corporation Act (§§8625-1 to 8625-33, both inclusive, General Code).

5. When a corporation maintains a stock of goods in a warehouse, located in Ohio, from which it fills orders:

(a) Solicited by soliciting agents in another state, but sent to the Ohio warehouse to be filled, or

(b) Solicited by agents in another state and after confirmation at the home office, sent to the Ohio warehouse to be filled, or

(c) Sent by the customer from another to the home office and sent by the home office to the Ohio warehouse to be filled, such corporation should not be considered as doing business within this state for the purposes of qualification under the Foreign Corporation Act (§§8625-1 to 8625-33, both inclusive, General Code).

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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3077.

SCHOOL—REOPENING OF SUSPENDED SCHOOL—PROCEDURE—DEFINITION OF "ENROLLED IN SCHOOL" FOR PURPOSES OF PETITION.

*SYLLABUS:*

1. *Children who are "enrolled in school" within the meaning of that expression, as used in Section 7730 General Code, wherein certain requirements are set up for a valid and effective petition which may be filed with a Board of Educa-*

tion to require the said board to re-open a school which has been suspended by favor of the statute, are those who have actually been in attendance at the particular school during the last school year prior to the suspension of the said school.

2. Where a petition has been filed for the re-opening of a suspended school, in pursuance of Section 7730 General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of said school, and who had become 15 years of age during the said school year, should not be regarded as having been "enrolled in school", as the term is used in the said statute, for the purpose of said petition.

3. Where a petition has been filed for the re-opening of a suspended school in pursuance of Section 7730 General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of the said school and who had, during said year graduated from the grades given in said school, should be regarded as having been "enrolled in school" as the term is used in said statute, for the purpose of the said petition.

COLUMBUS, OHIO, August 24, 1934.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

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

"I would appreciate your opinion on the interpretation of Section 7730 of the General Code of Ohio—particularly to the last paragraph of said Section, which provides:

'Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year; provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension.'

Now, my particular question involves the Board of Education of Allen Township in this county. In a certain district in said Township the parents or guardians of twelve children have filed a petition with the Board to re-open a school closed pursuant to Section 7730 of the General Code.

My first question is: Where one of the children covered in the petition was fifteen years of age on February 27th, 1934, should such child be counted in determining whether or not there were twelve pupils enrolled in the district; or would the fact that he was past fifteen exclude such child from being counted in determining whether or not there were twelve pupils.

My second question is: Whether or not a child under the age of fifteen years, but having been graduated from the eighth grade, could be counted in determining whether or not there were twelve pupils enrolled in the district."

Upon the reading of that part of Section 7730, General Code, which is quoted in your letter, it will be observed that the petition spoken of, in order to be

sufficient to require the re-opening of a suspended school, must be filed between May 1 and August 1 of any year and must be signed by the parents or guardians, possessing the proper residence qualifications, of twelve children of the prescribed age, who are "enrolled in school."

Clearly, if a school is not in session between May 1 and August 1, as is the case in most districts, no children could be enrolled in the school during that time, and enrollment of pupils in school could not be effected for the coming school session, after August 1, until the school was opened.

The significance of the provision of this statute, with respect to children "enrolled in school" was emphasized in the case of the *Board of Education vs. State, ex rel*, 37 O. App. 453, the first paragraph of the head notes of which reads as follows:

"Those petitioning to re-open a school under favor of Section 7730 General Code, must be representatives of enrolled school children, as defined by Section 7784, rather than enumerated children as defined by Section 7794 General Code."

In the course of the opinion in the above case, Judge Mauck on Page 456 of the report said:

"Enrolled children are those who have actually been in attendance at a particular school during the previous year."

In the application of the statute, however, consideration should be given, in my opinion, to the purpose and intent of the law and to that end it should be reasonably applied and strict compliance with its provisions required in order to confer on the residents of the district the extraordinary power given them by the statute. It constitutes an exception to the general authority conferred on Boards of Education by Section 7690, General Code, and related sections to govern and control the schools in their respective districts. Commenting on this phase of the matter, Judge Mauck in his opinion in the above case said:

"The section seeks to take the government of the school's from the Board of Education and vest it in the volunteer residents to the extent indicated and under the conditions prescribed."

He then quotes from the unreported case of the *Board of Education of Circleville vs. State, ex rel, Moody*, decided by the Court of Appeals of the Fourth District as follows:

"It will be seen that an extraordinary power is conferred upon what may be a very small minority of a particular district, to over-ride the judgment of a Board of Education, elected for the purpose of administering the school laws and officially charged with all the responsible duties pertaining to that office. It seems clear that when a group that may be as small as two or three householders, charged with no particular responsibility and not acting under oath, by simply fixing their signatures to a proper petition, may subvert the educational policy, such group should fully and literally comply with all the provisions of the statute conferring the right sought to be enforced."

The child mentioned in your first question was more than 15 years old during a portion, at least, of the preceding school year and must, therefore, be not regarded as having been a child under 15 years of age and enrolled in school, as provided by the statute.

The child spoken of in your second inquiry was enrolled in school during all the previous year and was under 15 years of age during that entire school year. There exists no reason for saying that he should not be counted as one of the necessary number of children to satisfy the requirements of the petition filed in pursuance of the statute. The mere fact that he had graduated from the grades of the school in question and did not intend to attend school at that place during the ensuing school year, makes no difference, as the statute makes no provision therefor. If a child who had attended the school during the previous year should become 15 years of age after the end of the school session, it clearly would be regarded as having been "enrolled in the school" within the scope of the term as used in this statute. I am, therefore, of the opinion in specific answer to your questions:

1. Where a petition has been filed for the re-opening of a suspended school, in pursuance of Section 7730, General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of said school, and who had become 15 years of age during the said school year, should not be regarded as having been "enrolled in the school," as the term is used in the said statute, for the purposes of said petition.

2. Where a petition has been filed for the re-opening of a suspended school in pursuance of Section 7730, General Code, a pupil who had been in attendance in the said school during the last school year prior to the suspension of the said school and who had, during said year graduated from the grades given in said school, should be regarded as having been "enrolled in the school" as the term is used in said statute, for the purposes of the said petition.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3078.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$19,000.00.

COLUMBUS, OHIO, August 24, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*