

Conservancy Districts, Metropolitan Park Districts, Sanitary Districts, Road Districts and other districts.

* * * "

Sec. 5625-33. "No subdivision or taxing unit shall:

* * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

* * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

* * *

* * * *The term 'contract' as used in this section, shall be construed as exclusive of current payrolls of regular employes and officers.*" (Italics the writer's).

It seems clear that the obligations incurred when contracts are made with teachers come within the classification designated "current payrolls of regular employes and officers."

I am therefore of the opinion that the clerk's certificate to the effect that the amount required to meet contracts with teachers "has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances" is not necessary.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2259.

SCHOOLS—TRANSPORTATION OF HIGH SCHOOL PUPILS RESIDING MORE THAN FOUR MILES FROM A HIGH SCHOOL—WHEN ELEMENTARY SCHOOLS OF DISTRICT ARE NOT CENTRALIZED—PAYMENT OF TUITION IN ANOTHER DISTRICT.

SYLLABUS:

High school pupils, who reside more than four miles from the high school maintained by the board of education in a rural school district where the elementary schools have not been centralized, are not entitled to transportation to such high school unless the county board of education deems and declares such transportation to be advisable and practicable; but if transportation is not furnished to such pupils, and they choose to attend a nearer high school in another district, the board of education is responsible for their tuition in the nearer high school.

COLUMBUS, OHIO, June 20, 1928.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

"I wish to thank you for copy of opinion No. 1672, which I received. I would also like a copy of Opinion No. 1477, dated December 30, 1927.

Referring specifically to the syllabus of Opinion Number 1672 and to certain portions of the opinion, as for instance the following:

'Thus it will be noted that in cases where pupils living more than four miles from the high school maintained in the district where they reside, attend a nearer high school, it is optional with the board of education whether transportation be furnished to the high school maintained by the board, or the tuition of the pupils be paid in the nearer high school which the pupils attend.'

According to the above language it would seem that it is mandatory upon the board of education to furnish transportation in all cases where pupils are more than four miles from the high school.

However, according to part of the language in Opinion No. 1477, General Code Section No. 7749-1 is referred to as authority for the proposition that transportation to high school can not be required of a board of education of a county school district wherein the schools have been centralized unless the county board of education deems and declares such transportation advisable and practicable. This latter proposition seems to be unrestricted in its application as to whether pupils reside more or less than four miles from the high school.

What I would like to know is if in the case of pupils living more than four miles distant from a high school in a rural school district where the elementary schools have not been centralized pupils are entitled to high school transportation which the district board of education is required and compelled to furnish or whether such transportation is required of the district board only in the event it is deemed and declared by the county board of education advisable and practicable."

Former Section 7764-1, General Code, enacted in 1921 (109 O. L. 380) and repealed in 1925 (111 O. L. 123) provided as follows:

Sec. 7764-1. "Boards of education shall provide work in high school branches, as mentioned in Section 7648, (7649) General Code, at some school within four miles of the residence of each such child for those children of compulsory school age who have finished the ordinary grade school curriculum except those who live within four miles of a high school and those for whom transportation to a high school has been provided."

At the time of the repeal of the section above quoted, and in the same act which contained said repeal, there was enacted Section 7749-1, which provides as follows:

Sec. 7749-1. "The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation

of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

The same Legislature which repealed Section 7764-1, supra, and enacted Section 7741-1, General Code, amended Section 7748, General Code (111 O. L. 284). Said Section 7748, General Code, provides as follows:

" * * * A board of education may pay the tuition of all high school pupils residing more than four miles by the most direct route of public travel from the high school provided by the board when such pupils attend a nearer high school, or in lieu of paying such tuition the board of education may pay for the transportation to the high school maintained by the board of the pupils living more than four miles therefrom. * * * "

While Section 7764-1, General Code, was in force, a duty rested upon the board of education to provide high school privileges at some school within four miles of the residence of each child in the district, who was of compulsory school age and who had completed the ordinary grade school curriculum, except such children as resided within four miles of a high school in some other district, or those for whom transportation to such high school was provided. That is to say, unless the board did provide high school privileges within four miles of the children's residence and there was no high school within four miles of such residence, it was the mandatory duty of the board to furnish transportation for the children to a high school. And vice versa, if the board did not choose to provide such transportation, it was the board's mandatory duty to furnish the high school privileges within four miles of the children's residence. The board had a right to choose either way of making the high school privileges available, that is, either by furnishing them within four miles of the children's residence or by transporting the pupils to a high school. See *Somers vs. Board of Education*, 113 O. S., 177. For those children who resided within four miles of either the high school in the pupil's own district, or the high school of another district it was not necessary that transportation be provided by the board.

Since the repeal of Section 7764-1, General Code, and the enactment of Section 7749-1, General Code, boards of education in all districts, except those rural districts in which the elementary schools are centralized and transportation thereto furnished, may furnish transportation to a high school either within or without the district if it sees fit to do so, but in no case is it required to do so unless the county board of education deems and declares such transportation to be advisable and practicable. If the county board does so declare, it then is the mandatory duty of the board to furnish the transportation. This rule is stated and discussed in my Opinion No. 1477 to which you refer in your inquiry and the rule, as you state, is not dependent in its application on whether pupils reside more or less than four miles from a high school.

You will observe that Section 7749-1, General Code, by its terms, in no wise is limited in its application by the distance a pupil lives from a high school, but applies to all high school pupils and to any high school either within or without the district. You will also note that Section 7749-1, General Code, makes no mention of payment of tuition. Its application is limited strictly to transportation, independent of any duty devolving on a board of education to pay tuition. The duty to pay tuition for pupils, who reside more than four miles from the high school in the pupil's own district and who attend a nearer high school, is fixed by the terms of Section 7748, General Code. The language used therein is permissive in form and in the

alternative. The board may pay the tuition of pupils, who reside more than four miles from the high school maintained by the board, in a nearer high school if the pupils attend such nearer high school, but needs not do so if it furnishes transportation to its own high school. It must, however, as I interpret the statute, do one or the other.

If the board chooses to furnish transportation for high school pupils, who live more than four miles from the high school maintained by it as Section 7749-1, General Code, permits it to do, or if it furnishes such transportation upon the order of a county board of education, it is relieved from paying tuition for pupils, who choose to attend a nearer high school. This proposition was considered in Opinion No. 1672, rendered by this office on February 3, 1928, to which opinion you refer in your letter. It was therein held:

"A board of education, which does not furnish transportation to the high school maintained by it, is required to pay the tuition of pupils residing within the district and more than four miles from such school, who attend a nearer high school in another district."

You quote from the body of said Opinion No. 1672 and state that according to the language quoted, "it would seem that it is mandatory upon the board of education to furnish transportation in all cases where pupils are more than four miles from the high school." It does not seem to me that the language quoted is susceptible of the interpretation you place upon it. It is not mandatory to furnish transportation to a high school, unless the county board of education deems and declares it to be advisable and practicable to do so. The local board may furnish this transportation, however, if it wishes to do so, but if it does not choose to do so and the county board of education does not require it to do so, it then becomes mandatory to pay the tuition of the pupils, who reside more than four miles from the high school maintained by it who attend a nearer high school, which they may do if they choose.

Specifically answering your question, it is my opinion that high school pupils, who reside more than four miles from the high school maintained by the board of education in a rural school district where the elementary schools have not been centralized, are not entitled to transportation to such high school unless the county board of education deems and declares such transportation to be advisable and practicable, but if transportation is not furnished to such pupils and they choose to attend a nearer high school in another district, the board of education is responsible for their tuition in the nearer high school.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2260.

WHITE WAY LIGHTING SYSTEM—CITY MAY ISSUE BONDS TO INSTALL.

SYLLABUS:

A city may issue bonds for the purpose of installing a white way lighting system.

COLUMBUS, OHIO, June 20, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads as follows: