

You are therefore advised that it is the opinion of this department that a constable cannot charge for copies of writs which he is required to serve.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1696.

BOARD OF EDUCATION—WIFE OF MEMBER OF BOARD APPEARS AS PARTY TO CONTRACT WITH SUCH BOARD OF EDUCATION—CONTRACT NULL AND VOID—SEE SECTION 4757 G. C.—WHERE SCHOOL SUSPENDED, TRANSPORTATION PROVIDED BY BOARD OF EDUCATION MUST BE TO PUBLIC SCHOOL.

1. *Where the wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of section 4757 G. C., and is null and void.*

2. *Where a school has been suspended by a board of education under the provisions of section 7730 G. C., the transportation provided by the board of education must be to a public school and not to a school privately supported.*

COLUMBUS, OHIO, December 10, 1920.

HON. LEWIS F. STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts furnished to you by a member of a township board of education in your county:

"I am at present a member of the school board of Moulton township, Auglaize county, Ohio. I have three children of school age attending school, and the proper school for them to attend is the Otterbein school in said township. At the beginning of the 1920 term the school board closed said school by reason of the fact that there were not enough pupils to justify it remaining open and at that time the school board of which I am a member contracted with my wife, agreeing to give her \$25.00 per month to transport her and my children to a school in Wapakoneta without designating the particular school, Wapakoneta being the nearest school point. With the consent of the district school superintendent I enrolled my children in St. Joseph's parochial school at Wapakoneta and my wife has been transporting them to Wapakoneta since.

I wish to ascertain first whether the contract with my wife is a good contract, and, secondly, whether the board has the power to authorize the payment to anyone or transporting children to a parochial school under the conditions above mentioned."

Bearing upon the first question, whether the contract of the board of education with the wife of a member of such board of education is a legal contract, your attention is invited to section 4757 G. C., which reads in part as follows:

"No member of the board of education shall have, directly or indirectly,

any pecuniary interest in any contract of the board of which he is a member, except as clerk or treasurer. * * * ”

Bearing upon the above section opinion No. 911, issued by this department on January 5, 1918, page 20, Vol. 1, Opinions of the Attorney-General, says in the first branch of the syllabus:

“A member of a board of education cannot have an interest in a contract for the transportation of pupils with the board of which he is such member.”

“ * * * A member of a board of education cannot participate in any contract in which he is pecuniarily interested or be employed in any manner for compensation by the board of education, except as clerk or treasurer.” Opinion 457, page 761, Opinions of the Attorney-General, Vol. 1, 1919.

It is not believed necessary to discuss at length in this opinion the question as to whether a husband, who is a member of the board of education, has a pecuniary interest in a contract made by his wife with such board of education, for that question is very fully covered in Opinion 1674, issued by this department on December 3, 1920, a copy of which is herewith enclosed. The syllabus of such opinion reads as follows:

“1. The act of a husband member of a board of education in voting to employ his wife as a teacher, may not be a violation of section 12932 G. C. under every state of facts.

“2. Whether such husband board member votes to employ his wife as a teacher or sits mute while such contract is entered into is in violation of section 4757 G. C. and said contract is null and void.

“3. The wife, having rendered services and received payment for the same under such a contract, in the absence of fraud, equity may leave the parties thereto where they are found.”

In arriving at the above conclusion, the question before this department was whether the wife could be employed as a teacher while the question at hand in the present instance is whether the wife could be employed as a school driver or one who had a contract with the board of education for the transporting of pupils. The cases are very much the same, for both a teacher and a school driver are employes of the board of education and to that extent their cases are parallel. Your first question, therefore as to whether the contract with the wife of the member of the board of education is null and void, would appear to be answered in this opinion No. 1674, very recently issued.

Your second question is whether the board of education has power to authorize the payment to any one for the transporting of pupils to a parochial or private school, under circumstances where a public local school has been closed because there were not enough pupils to justify its further continuance. If the closing of the school was brought about by these circumstances, then such action must have been taken under authority of section 7730 G. C., which reads in part as follows:

“Upon such suspension the board of education of such village or rural district shall provide for the conveyance of all pupils of legal school age, who reside in the territory of the suspended district, and who live more than

two miles by the nearest traveled highway from the school to which they have been assigned, to a *public school* in the rural or village district or to a *public school* in another district. * * * ”

It will be noted in the above section that the language is very clear that the transportation must be provided to a “public school” in another district and not to a private school of any kind. Were pupils transported by a board of education to a school privately supported, then there might later logically follow a request for tuition payment for such pupils, and this claim could not be recognized by the board of education under the law, the same being discussed in Opinion 282, appearing at page 497, Vol. 1, Opinions of the Attorney-General for 1919, the syllabus of which reads:

“Tuition contracts and agreements must be made between boards of education representing school districts and any school privately supported cannot collect tuition from a board of education (sections 7750-7752 G. C.) and tuition can be paid only to boards of education within the state of Ohio.”

Based upon the statutes above quoted and the opinions heretofore issued by this department, it is therefore the opinion of the Attorney-General that:

1. Where the wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of section 4757 G. C., and is null and void.

2. Where a school has been suspended by a board of education under the provisions of section 7730 G. C., the transportation provided by the board of education must be to a public school and not to a school privately supported.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1697.

OHIO REFORMATORY FOR WOMEN—COMMITMENTS UNDER SECTION 13031-17-a G. C. ARE FELONIES—SAID SECTION CONSISTENT WITH SECTION 2148-9 G. C.—COMMITMENTS UNDER SECTION 13031-17-b G. C. ARE MISDEMEANORS—EXCEPTION TO GENERAL RULE STATED BY SECTION 2148-9 G. C.

1. *Commitments to the Ohio Reformatory for Women under the provisions of section 13031-17a G. C. (108 O. L., Part I, p. 731) are to be regarded as felony commitments, and are “for an indeterminate period of time not less than one nor more than three years in duration.” With said section, the provisions of section 2148-9 G. C. are entirely consistent.*

2. *Commitments to the Ohio Reformatory for Women under the provisions of section 13031-17b G. C. (108 O. L. Part I, p. 732) are to be regarded as misdemeanor commitments, and are, pursuant to the provisions of said section, “for not*