

boards of education of the power to transport pupils who lived less than two miles from the school to which they had been assigned and retain in force Section 7737, General Code.

Moreover, it should be noted that in the act of the Legislature, passed in 1925 (111 O. L. 123), wherein Section 7731 of the General Code was last amended, by which amendment the language extending the optional right to boards of education to transport pupils living less than two miles from school was deleted, there was contained Amended Section 7749-1, General Code. This section before amendment extended to boards of education of a village or a centralized rural school district the power to provide transportation to a high school in another district, if none was maintained in the given district. See 109 O. L. 290. As amended, it extended to a board of education of any district the right to provide transportation to a high school *within or without the school district*.

It would seem to me to be the height of absurdity to contend that the Legislature intended by the amendment of Section 7731, General Code, in 1925, to deprive boards of education of the power to provide transportation of elementary school pupils who live less than two miles from the school to which they might be assigned and in the same act extend to a board of education the power to transport high school pupils regardless of the distance they live from the school.

I am of the opinion, therefore, that a board of education may in its discretion lawfully provide transportation for elementary school pupils who reside less than two miles from the school to which they are assigned, but cannot be required to provide that transportation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1525.

PAYMENTS—MADE TO STATE TREASURER FOR ASSURANCE FUND
UNDER TERMS OF TORRENS LAW—NEED NOT BE BY PAY-IN-OR-
DER OR DRAFT OF STATE AUDITOR.

SYLLABUS:

Payments made to the Treasurer of State by county clerks, in pursuance of Section 8572-103 of the General Code, need not be by pay-in-order or draft of the Auditor of State as is provided for payments into the state treasury by Section 248 of the General Code.

COLUMBUS, OHIO, February 14, 1930.

HON. H. ROSS AKE, *Treasurer of State, Columbus, Ohio.*

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

“It has come to my notice that for a number of years past it has been the custom and practice of the Treasury Department to receive moneys paid under Section 8572-103, Ohio Laws, generally referred to as the Torrens Law, without compliance with the general Section 248, which provides that ‘all payments into the state treasury shall be by pay-in-order or draft of the Auditor of State.’

Will you kindly advise me as to whether or not the provisions of Section

248, providing for the manner in general in which moneys shall be paid into the treasury, apply to the Treasury Department in the receipt of moneys paid in under Section 8572-103:”

Section 248 of the General Code reads as follows :

“All payments into the state treasury shall be by pay-in-order or draft of the Auditor of State, and no payment into the state treasury shall discharge a liability to the state unless it is made on such pay-in-order or draft. Such pay-in-order or draft shall specify the amount to be paid, on what account, and to the credit of what fund. The treasurer of state shall file and carefully preserve the pay-in-order or draft, and on receiving payment, give such payor, if demanded, a receipt for the money so paid.”

Section 8572-103, General Code, is a part of what is known as the Torrens Law, a law originally enacted in 1913, the object of which is concisely stated in the title of the act of the Legislature enacted at that time, which is as follows :

“An act to provide for the settlement, registration, transfer and assurance of land titles and to simplify and facilitate transactions in real estate.”

In short, the act provided for the settlement and registration of land titles and for the guarantee of the correctness of the title as so registered. For the protection of the registrants an assurance fund was provided for.

Section 8572-102 provided that upon the original registration of land there should be paid to the clerk of the court one-tenth of one per cent of the assessed value of the land on the basis of the last assessment for general taxation “for the purposes of an assurance fund.”. By the terms of Section 8572-103, the Treasurer of State is made the custodian of the assurance fund provided for by Section 8572-102, supra. Said Section 8572-103 reads as follows :

“All money received by the clerk under the provisions of the preceding section shall be paid at least once a month to the treasurer of the state, who shall, with the advice and approval of the Secretary of State and the State Auditor, invest and reinvest and keep invested said funds in bonds and securities of the United States, or of the State of Ohio, or of any county, township, district or municipality thereof, or in approved mortgages on income producing lands that are registered under this act, provided that no loan shall be made by mortgage on any land which is not assessed, at least general assessment, for at least twice the amount of the loan, exclusive of improvements.”

It will be observed from the terms of the foregoing statute that the Treasurer of State is made the custodian of the assurance fund for the protection of registered land titles and is empowered, with the advice and approval of the Secretary of State and State Auditor, to invest and reinvest and keep invested said funds in certain enumerated securities. The statute provides that payments shall be made by the several clerks of courts to the treasurer as custodian of such assurance fund. It does not provide that payment shall be made into the treasury of State, whereas Section 248, supra, has reference only to such payments as are made into the treasury of state.

The assurance fund provided for by Section 8572-102, supra, is not a state fund but a trust fund for the benefit of land title registrants who have a right of action against the treasurer as the custodian of the assurance fund for loss or damage occasioned by fraud or mistake in the original registration.

Payments made by the county clerks to the state treasurer, of fees received for registration of land under the said Torrens Law, are not payments in discharge of an obligation owing to the state as such, and are not, in my opinion, such payments as are embraced within the terms of Section 248, *supra*.

I am of the opinion, therefore, in specific answer to your question, that payments made to the Treasurer of State by county clerks, in pursuance of Section 8572-103 of the General Code, need not be by pay-in-order or draft of the Auditor of State as is provided for payments into the state treasury by Section 248 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1526.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING
NEAR BELLEVUE, HURON COUNTY.

COLUMBUS, OHIO, February 15, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of January 9, enclosing copy of proposed contract providing for the elimination of the grade crossing over the tracks of the New York Central Railroad Company, The Wheeling and Lake Erie Railway Company, and The Lake Shore Electric Railway Company, on State (Intercounty) Highway No. 289, just east of Bellevue in Huron County.

I have carefully examined the proposed agreement and find it correct in form and hereby approve the same.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1527.

TOWNSHIP CEMETERY LOT—EXPENSE FOR RECORDING OF DEED
DETERMINED—SUCH EXPENSE RETAINED BY TOWNSHIP CLERK
—TWO TRUSTEES MAY EXECUTE SAID DEED.

SYLLABUS:

1. *The expense of recording a deed for a township cemetery lot to be charged by a township clerk as provided in Section 3448, General Code, should not exceed ten cents per one hundred words.*
2. *Such expense may be legally retained by the township clerk.*
3. *A deed for a township cemetery lot executed in accordance with the provisions of Section 3448, General Code, by at least two members of the board of township trustees is sufficient compliance with this section.*

COLUMBUS, OHIO, February 15, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department your written opinion upon the following: