

2950.

## APPROVAL, AGREEMENT FOR RELOCATION OF HIGHWAY IN FULTON COUNTY TO AVOID GRADE CROSSING WITH D. &amp; I. RAILROAD.

COLUMBUS, OHIO, November 30, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of November 15, 1928, enclosing copy of an agreement covering the proposed relocation of State Highway No. 299 in Fulton County, to avoid a grade crossing with the D. & I. Railroad Company, and asking my approval thereof.

I have examined the proposed agreement, which is executed on behalf of the railroad, and am of the opinion that it is correct as to form. Accordingly, I am returning it herewith with the advice that it meets with my approval.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2951.

## TRANSPORTATION OF PUPILS—SPECIFIC CASE DISCUSSED—OPINION NO. 2489 FOLLOWED.

## SYLLABUS:

*Rules set forth in opinion of the Attorney General for 1927, Vol. IV, page 2489, with reference to the manner of measuring the distance a school pupil lives from the school to which he is assigned applied to a specific state of facts.*

COLUMBUS, OHIO, November 30, 1928.

HON. JOHN W. LOREE, *Prosecuting Attorney, Celina, Ohio.*

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

“The Board of Education of Jefferson Township have presented a question of law and fact involving the school laws respecting the transfer of youth where a school house is abandoned, arising out of the following statement of facts:

The school house in Celina, Ohio, has three entrances—one at the East end, one at the West end, and one at the North side thereof. The hall running from East to West is 165 feet in length. The hall running North and South is 100 feet in length. A sidewalk leads from the West door of the school house to Sugar Street on the West side of the school property. A side walk leads from the East door of the school house to Walnut Street on the East side of the school property. Both sugar and Walnut Streets cross a street extending East and West known as Market Street. The distance from the center of Walnut Street to the East door of the school house is 123 feet. The distance from the East door of the school house

through the hall to the West door of the school house is 165 feet. The distance from the West door of the school house to the center of Sugar Street is 123 feet. The distance from the North door of the school house to the center of the hall running East and West is 50 feet.

A Mrs. B. living in a Rural District West of town, the school in which has been abandoned, sends her children by assignment of the Board to the Celina Schools. After her children leave the curtilage of their home and go to the center of the road toward the school house they would travel on a road leading into Market Street. If they were to turn on Sugar Street and go to a point opposite the West door of the school house, they would travel 333 feet less than two miles. If they continue on Market Street to Walnut Street and from thence to a point opposite the East door of the school house and from thence to the East door they will have to travel two miles and 78 feet. Both the East and West doors are available for entrance of the school youth at all times for both sexes, except when school is called and the children are required to enter for their class work after a recess. The girls are required to enter the West door because the girls' toilet is in the basement of the West end of the building and the boys are required to enter the East door because the boys' toilet is in the basement at the East end of the building.

Mrs. B. has four boys attending this graded school and insists because her boys must travel from the curtilage of their home to the East door of the school house and are required to travel two miles and 78 feet, that she is entitled to have transportation furnished her children.

The Board claims that if her children were to travel on Sugar Street when they come to town and enter the building at the West end of the building they would be 333 feet less than two miles and therefore insists that transportation should not be furnished.

In view of the rule adopted by your Department on December 14th, 1927, found in Opinion No. 1364 of your Department, the Board is desirous of your opinion as to whether transportation should be furnished for these boys or not. They raise the moot question as to whether or not if this family consisted of two boys and two girls that the boys should be hauled to school and the girls compelled to walk.

I should be pleased to have your opinion as to whether or not the Board of Education of Jefferson Township Rural School District is required to furnish transportation for these boys under the facts above recited."

By the terms of Sections 7731 and 7731-4, General Code, transportation to school must be furnished by a board of education of the school district for all elementary school pupils who live more than two miles from the school to which they are assigned or in lieu thereof, an agreement may be made by the board of education with the parent or other person in charge of the pupil for the transportation of such pupil.

In a former opinion reported in the Opinions of the Attorney General for 1927, Vol. IV, page 2489, the rule with reference to the manner of measuring the distance which pupils must travel to school is stated thus:

"Under the law providing that in all school districts transportation shall be provided for resident elementary school pupils who live more than two miles from the school to which they are assigned, the distance should

be computed by beginning at the door of the school house which would be the most accessible to the pupil in traveling from his home 'by the nearest practicable route for travel accessible to such pupil', thence by the regularly used path to the center of the highway, thence along the center of the highway which is the nearest practicable route for travel accessible to such pupil to a point opposite the entrance to the curtilage of the residence of the pupil, (or the path or traveled way leading to the entrance to such curtilage as the case may be) thence to the entrance of the curtilage, along the path or traveled way to said entrance if the curtilage of the residence of the pupil does not extend to the highway."

A board of education is authorized by force of Section 4750, General Code, to make such rules and regulations for the government of its employes and the pupils of the schools as it may deem necessary. If it were deemed necessary by a board of education, and the circumstances warranted it, to make a rule completely prohibiting the pupils of a school from using a certain entrance to the school building at all times and thus compel them to use other entrances, the most available entrance which they were permitted to use would be the one which would necessarily have to be considered as one of the termini of the route to be traveled by the pupil in attending school; and if by the use of the entrance to the building which the pupils were permitted to use they would be compelled to travel more than two miles from their home, they would come within the provisions of Section 7731, General Code, and would be entitled to transportation even though other entrances to the building from which they were barred were less than two miles from where they lived.

I do not understand from your statement of the rule adopted by the Jefferson Township Rural Board of Education that any of the pupils are prohibited from using the west door of the school house at any other time than when school is called and school sessions are about to be opened. You state:

"Both the East and West doors are available for entrance of the school youth at all times for both sexes, except when school is called and the children are required to enter for their class work after a recess."

It appears from this statement that all the pupils are permitted to use the west door when they come to school in the morning and there would therefore be no question but what the pupils in question did live less than two miles from school.

The rule of the board as you state it is not entirely clear and being somewhat ambiguous it should not be interpreted so as to place an extraordinary or additional financial burden on the district.

I am therefore of the opinion that, since under the rule adopted by the Board of Education of Jefferson Township Rural School District all pupils attending the school may be permitted to use the west door of the building in entering the school house at all times, except when school is called and the children are required to enter for their class work after recess, the pupils about which you inquire, who live less than two miles from the school, the distance being measured in conformity with the rule laid down in the 1927 opinion above referred to, using the west door of the school house as one of the termini of the route to be traveled by these pupils in coming to the school from their home, are not entitled to transportation to the school, to be paid for from public funds.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*