

3948.

PUPIL—TRANSPORTATION OF SCHOOL CHILDREN—SPECIFIC CONTRACT.

*SYLLABUS:**Transportation of school children—specific contract considered.*

COLUMBUS, OHIO, February 16, 1935.

HON. SAM L. SUMMERS, *Prosecuting Attorney, Ravenna, Ohio.*

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

“On the 14th day of July, 1933, the following contract was entered into between Mrs. ——— and the Atwater Board of Education, this county:

“This agreement made and entered into at Atwater, Ohio, this 14th day of July, 1933, by and between the Board of Education of Atwater School District, Portage County, Ohio, party of the first part, and Mrs. ———, party of the second part, Witnesseth: That said party of the second part, in consideration of the promises and agreements of said party of the first part herein contained, hereby promises and agrees to transport *the pupils* to and from the centralized school, along the route hereinafter specified, each day the school of said Atwater Township is in session, for three school years, in accordance with the specifications which are hereby made a part of this contract, for the sum of \$3.40 each day, which shall be payable monthly. Specifications which said party of the second part agrees to conform to are as follows:

- (1) To abide by the state's memorandum on Specifications to Contract attached hereto, and that same shall become a part of this agreement.
- (2) To abide by the provisions of the Specifications to Contract: Supplement, provided, however, that said requirements shall apply only in so far as applicable to the type of transportation used, whether motorized or non-motorized. Contractor must furnish \$500.00 bond. Contractor must carry (\$5,000.00) Five thousand dollars, liability insurance;
- (3) To abide by the provisions of the General Code, of Ohio, and its regulations affecting school bus transportation;
- (4) To collect pupils on the following described route: No. 3; Start at Whittleseys Corners, south to county line, west to first road, north to first road, then to Gretsinger Place, returning past Robinson Place to Whittleseys Corners, collecting *all* children, then to school buildings.
- (5) To report each week upon the transportation service rendered.

In consideration whereof, said party of the first part hereby promises and agrees to pay said party of the second part the sum of \$3.40 for each school day, when school is in session, and party of the second part is required to make a trip, which sum shall be paid monthly. It is mutually agreed by and between the parties hereto that said party of the first part may rescind and annul this agreement at any time before the expiration of said school year if said party of the second part shall fail to perform his duties properly and diligently. It is further mutually agreed that the said party of the second part will not demand, and said party of the first part will not be required to pay any compensation for days which the school is not in session for any cause whatsoever, except regular holidays, and on which the said party of the second part is not required to make a trip.

IN WITNESS WHEREOF, the parties have hereunto set their hands to duplicate hereof, this 14th day of July, 1933.

.....XXX.....

President of the Board of Education.

.....XXX.....

Clerk of the Board of Education.

.....Mrs.....,

Specifications of contract and Supplement thereto, were attached to and made a part of this contract. Section 14 of Specifications to Contract is as follows:

'14. The driver shall be paid \$3.40 per day for each day when trips are actually made. If only portions of trips are made or the route is lengthened the aforementioned amount shall be pro rated on the mileage covered.'

All of the route described in the Contract is located in Portage County, as the Atwater School District is all in Portage County. About a quarter mile of the route, however, is on the line between Portage and Stark Counties. Mrs. ——— has transported the children as provided by the contract and has been requested and required by the Board to transport high school children from Stark County in addition to those children living on the road specified, although there is a Stark County bus covering the same Town Line Road which is prepared for and furnished for the purpose of transporting those same children to Stark County school. The Stark County children enter her bus along the route but as there are nine extra children, all of high school age, she has been required to purchase a larger bus and consequently invest more money than was necessary for the transportation of the children living in the Atwater School District on the route specified in her contract.

Question: Is the Atwater Board of Education under obligation to pay her an additional amount for the transportation of the nine Stark County high school children not living on the route specified and for whom the Board is receiving tuition?"

Under the plain terms of the transportation contract as set out in your letter, the contractor, Mrs. ———, is to receive \$3.40 per day "for each day when trips are actually made." No provision is made in the contract for the payment of any more than \$3.40 per day when trips are actually made, unless the route as provided for in the contract, is lengthened, in which case the amount is to be "pro rated on the mileage covered."

Under the facts as stated by you, it does not appear that the route was lengthened, and therefore, there is no obligation under the contract, on the part of the board of education, to pay more than \$3.40 per day.

I am therefore of the opinion, in specific answer to your question, that under the provisions of this contract, the Atwater Board of Education is not under obligation to pay Mrs. ——— an additional amount for the transportation of the Stark County high school children mentioned.

Respectfully,
JOHN W. BRICKER,
Attorney General.