

1839.

APPROVAL, NOTES OF GREENWICH VILLAGE SCHOOL DISTRICT,  
HURON COUNTY—\$67,500.00.

COLUMBUS, OHIO, March 13, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1840.

APPROVAL, BONDS OF BEACHWOOD VILLAGE SCHOOL DISTRICT,  
CUYAHOGA COUNTY, OHIO—\$49,000.00.

COLUMBUS, OHIO, March 13, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1841.

APPROVAL, NOTES OF VAN BUREN TOWNSHIP RURAL SCHOOL DIS-  
TRICT, SHELBY COUNTY, OHIO—\$31,000.00.

COLUMBUS, OHIO, March 13, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1842.

BOARD OF EDUCATION—MAY EMPLOY TEACHERS TO TRANSPORT  
PUPILS—SUCH TEACHER IS "EMPLOYEE" WITHIN MEANING OF  
WORKMEN'S COMPENSATION ACT—SHOULD GIVE BOND—PAR-  
ENTS WHO TRANSPORT ARE NOT "EMPLOYEES."

**SYLLABUS:**

1. *Teachers in the public schools may be employed to transport pupils to or from school; such teachers may also enter into a contract with the board of education for such purpose; if the teacher is employed for the purpose of transporting pupils under a contract of hire, such teacher would be an "employee" within the meaning of the Workmen's Compensation Law of Ohio, and the amount paid the teacher for transpor-*

*tation, less that part of the compensation which is paid for the use of the teacher's automobile, should be considered in determining the amount of premium to be paid by said board of education into the state insurance fund.*

2. *When a person is employed by the board of education, or enters into a contract with such board, to transport pupils in a private automobile, and is the driver of the machine, such person should give a bond as required in Section 7731-3 of the General Code, and also obtain from the county board of education or superintendent of schools a certificate that he is eighteen years of age, of good moral character and qualified for such position, as required by said Section 7731-3.*

3. *Parents who transport their own children to and from school by virtue of an arrangement made between said parents and the board of education, as provided in Section 7731-4 of the General Code, are not "employees" within the meaning of the Workmen's Compensation Law.*

COLUMBUS, OHIO, March 13, 1928.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

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

"I respectfully request your opinion upon the following matter, to-wit:

Two grade school children live more than two miles from their school building and the board of education elects to pay the school teacher twenty dollars (\$20) per month for taking to and from school these two children. She transports them in her automobile.

In view of General Code Section 7731-3, is this teacher 'employed as driver of a school wagon or motor van' so that it is necessary for her to give bond and receive a certificate of good moral character?

Also, are she and parents of children who convey their own children to school and receive payment therefor from the board of education within the provision of the Industrial Insurance Act and should this compensation paid such teachers and parents be listed by the several boards of education in their report to the Industrial Commission?

I am enclosing a printed form of Contract for Conveyance of Pupils and also a bond on Contract for Conveyance of Pupils, which are put out by a commercial concern. As I read this contract and bond the children conveyed are not protected by this bond for the negligence of the driver. In view of the above cited section should not this bond and contract be drawn to protect the children conveyed against the negligence of the driver?"

Your first question requires consideration of the relation which exists between the teacher who is transporting pupils and the board of education. The Workmen's Compensation Law authorizes compensation to employes, etc.; that term is defined in Section 1465-61 of the General Code, which in so far as pertinent to this question reads as follows:

"The terms 'employee,' 'workman' and 'operative' as used in this act, shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and villages, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein. \* \* \*

This section provides that all persons in the service of a board of education "under any appointment or contract of hire, express or implied, oral or written," are "employees" within the meaning of the Workmen's Compensation Law of Ohio. Whether or not the teacher in question is under a contract or appointment of hire is a question of fact. There are not sufficient facts given in your letter to permit an opinion thereon. The term "appointment or contract of hire" must be given its usual and ordinary meaning. It creates between the parties the relation of master and servant, as distinguished from that created by an independent contract. You can ascertain the facts and determine whether or not such an appointment or contract of hire exists in the particular case, and thereby determine whether or not the teacher in question is an "employee." If such teacher is an "employee," then the amount of the compensation paid for the teacher's services should be added to the payroll for the purpose of ascertaining the proper premium to be assessed against the board of education. There should be deducted from the total amount paid the teacher, that portion of the amount paid for the use of the automobile. There is no reason why a board of education, if it sees fit so to do, may not employ the same person to transport pupils either by contract or as an employee for that purpose, and to teach in the schools. There is nothing incompatible in the duties which said teacher would have to perform, and whether or not it is physically possible for the same person to satisfactorily perform both duties is a matter for the board of education to determine.

Your second question is whether or not this teacher would be required to give a bond and certificate of good moral character, as provided in Section 7731-3 of the General Code. Said section reads in part as follows:

"When transportation is furnished in city, rural or village school districts, no one shall be employed as driver of a school wagon or motor van who has not given satisfactory and sufficient bond and who has not received a certificate from the county board of education of the county in which he is to be employed or in a city district, from the superintendent of schools certifying that such person is at least eighteen years of age and is of good moral character and is qualified for such position. \* \* \*

The section provides that when transportation is furnished by the board of education, the driver of the school wagon or motor van must give a sufficient bond. In the instant case, the teacher is transporting the pupils in her private automobile. If we give the language used by the Legislature in said section a technical meaning, it probably could not be said that the teacher's private automobile is a "school wagon or motor van." In construing the language of the section, consideration must be given to the intent of the Legislature as expressed therein. I believe the intention so expressed requires the driver of a vehicle used to transport pupils, when the transportation is provided by the board of education, to give a bond to protect the pupils against any improper or negligent act on the part of said driver. I do not believe the term "school wagon or motor van" should be given a narrow or limited meaning. I am therefore of the opinion that the teacher should be required to give a "sufficient bond" as required by said section.

The section also provides that such driver must obtain from the county board of education or superintendent of schools a certificate that he or she is at least eighteen years of age and is of good moral character, and is qualified for such position. In so far as the good moral character is concerned, it is quite apparent that the teacher, having been granted a certificate to teach, has a certificate from a high authority that she is of good moral character, but the certificate must also show that she is eighteen years of age and is qualified to perform the services, or, as the statute provides, "for such position."

It is therefore my opinion that the teacher should furnish the certificate required by said section.

Your next question is whether or not parents who convey their own children to and from school and receive payment therefor from the board of education are "employees" within the meaning of the Workmen's Compensation Law. Arrangements may be made with the parents to transport their children in lieu of such transportation being furnished by the board of education by virtue of Section 7731-4, General Code, which provides as follows:

"It shall be deemed compliance with the provisions of Sections 7730, 7731 and 7764, General Code, by such local board if such board agrees to pay the parent or other person in charge of the child or children for the transportation of such child or children to school a rate determined for the particular case by the local board of education for each day of actual transportation."

Sections 7730, 7731 and 7764 of the General Code mentioned in the above quotation refer to transportation of pupils. Arrangements made with such parents under the provisions of said section would not constitute a contract of hire as provided in Section 1465-61, *supra*. There would be no element of master and servant existing between the board of education and the parents when arrangements were made for transportation as provided in said section. Therefore, the parent while conveying his own children to or from school would not be an "employee" of the board of education within the meaning of the Workmen's Compensation Law.

Your next question requires a consideration of the form of contract for conveyance of pupils and the form of bond on contract for conveyance of pupils.

It will be observed that Section 7731-3, *supra*, provides that each driver of a school wagon or motor van used in the transportation of pupils shall give a satisfactory and sufficient bond. A *satisfactory* bond would be a bond conditioned on the faithful performance of the driver's duties while so transporting the pupils, thus covering any failure on the part of the driver so to perform his duties and any wrongful act or negligence on his part. A *sufficient* bond would be one sufficiently large to cover any liability which might accrue by reason of the driver's wrongful acts or negligence.

In line with recent decisions of the Supreme Court, it is my opinion that the giving of a bond, such as the statute requires drivers of school vans to give, fully protects the pupils conveyed, to the extent of damages incurred by reason of the negligence of the driver, and that both the driver and his bondsmen are liable in damages on account of any negligence of which the driver may be guilty. In the case of *U. S. Fidelity & Guaranty Co. vs. Samuels*, 116 O. S. 586, it was held:

"1. Where in the discharge of official duty a police officer fails to take that precaution or exercise that care which due regard for others requires, resulting in injury, his conduct constitutes misfeasance.

2. A surety on the bond of a motorcycle police officer, with a condition that he 'shall faithfully perform the duties of the office of policeman of said city,' is liable for the negligent operation of a motor vehicle by such officer in the performance of his official duties."

In Opinion No. 1632, rendered January 30, 1928, to the Director of Education, the applicability of the principles involved in the *Samuels* case, *supra*, to the bond given by the driver of school busses was discussed, and I enclose herewith a copy of said opinion.

The printed form of contract and bond submitted with your communication relates to a person contracting to transport pupils; and while this contract, wherein it

is agreed to transport the pupils, imports safe transportation, and the bond is conditioned on the faithful performance of the terms of the contract, thus protecting the pupils by the terms of the bond, it should be noted that the contractor and the driver of the conveyance may or may not be the same person. The statute provides that the *driver* shall give a bond.

It is therefore my opinion that:

(1) Teachers in the public schools may be employed to transport pupils to or from school; such teachers may also enter into a contract with the board of education for such purpose; if the teacher is employed for the purpose of transporting pupils under a contract of hire, such teacher would be an "employee" within the meaning of the Workmen's Compensation Law of Ohio, and the amount paid the teacher for transportation, less that part of the compensation which is paid for the use of the teacher's automobile, should be considered in determining the amount of premium to be paid by said board of education into the state insurance fund.

(2) When a person is employed by the board of education, or enters into a contract with such board, to transport pupils in a private automobile, and is the driver of the machine, such person should give a bond as required in Section 7731-3 of the General Code, and also obtain from the county board of education or superintendent of schools a certificate that he is eighteen years of age, of good moral character and qualified for such position, as required by said Section 7731-3.

(3) Parents who transport their own children to and from school by virtue of an arrangement made between said parents and the board of education, as provided in Section 7731-4 of the General Code, are not "employees" within the meaning of the Workmen's Compensation Law.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1843.

APPROVAL, LEASE TO OFFICE ROOMS IN THE GOURLEY & TRAUTMAN BUILDING, COLUMBUS, OHIO, FOR USE OF THE BUREAU OF MOTOR VEHICLES.

COLUMBUS, OHIO, March 13, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease, in triplicate, between the American Education Press, Inc., a corporation, of Columbus, Ohio, as lessor, and the State of Ohio, acting by and through R. T. Wida, Superintendent of Public Works of the State of Ohio, as lessee, for and on behalf of the Bureau of Motor Vehicles, for the entire second and third floors of the building known as The Gourley & Trautman Building, 50 South Third Street, Columbus, Ohio. Said lease is for a term of ten (10) years, beginning March 15, 1928, and calls for an annual rental in the sum of \$8,000.00 per year, payable in monthly installments of \$666.66  $\frac{2}{3}$ . Said lease has been executed on the part of the lessor by its secretary, but has not as yet been executed by you on behalf of the State of Ohio; nor does it appear that said lease has been acknowledged by an officer of the lessor.