

OPINION 44

holidays by ordinance of the common council of a city or by the controlling board of a municipally owned utility, board of county commissioners of a county, town board of a town, or advisory board of a township, or the board of directors or regents of a cemetery.”

Had the statute stopped after the language authorizing boards of political subdivisions to make provision for such holidays, the answer would be in the affirmative. However, the Legislature went on to specify the particular kind of boards and agencies which could do so. They did not name the board of trustees of a library district and I am therefore of the opinion they could not grant such a vacation under said statute, without an amendment to the statute.

OFFICIAL OPINION NO. 44

September 19, 1963

Hon. Joe Bruggenschmidt
State Representative
R. R. No. 1
Tell City, Indiana

Dear Representative Bruggenschmidt:

Your letter of September 11, 1963, has been received and reads as follows:

“Located within the civil limits of Troy Township, Perry County, Indiana, are the Tell City School Corporation, the Cannelton School Corporation and the Metropolitan School District of Troy Township.

“Traditionally, the Metropolitan School District of Troy Township has provided transportation for students attending the public elementary schools of the Tell City Corporation. The question now arises that this practice may be in violation of the laws of the State of Indiana.

"I would appreciate your official opinion on this question:

"May the Metropolitan School District of Troy Township provide transportation for students attending the elementary public schools of the Tell City School Corporation as these students are residents of the Metropolitan School District of Troy Township who choose to attend the public schools of the Tell City School Corporation on a private transfer tuition agreement."

Ordinarily when pupils desire to attend a public school in a school corporation other than that of their residence, this is accomplished pursuant to a transfer issued by the school corporation of the child's residence to the receiving school corporation under the provisions of the transfer statute.

Acts of 1921, Ch. 253, Sec. 1, as amended, as found in Burns' (1948 Repl.), Section 28-3701.

In such an event, the forwarding school corporation pays the statutory transfer charges. However, it is a well recognized practice that children may attend a public school other than that of their residence without a transfer by the parents paying the charges to the receiving school corporation. In doing so the parent is thereby complying with the requirement of the compulsory education statute that the child attend a public school to which it is assigned or by providing said child "with instruction equivalent to that given in such public school."

Acts 1953, Ch. 249, Sec. 5, as found in Burns' (1963 Supp.), Section 28-505.

You desire to know if the school corporation of a child's residence is permitted to furnish transportation to children attending school in another public school corporation where the child is not enrolled under an official transfer but under an arrangement for such transfer costs to be paid by the parent.

Acts of 1921, Ch. 253, Sec. 2, as amended and found in Burns' (1948 Repl.), Section 28-2805, in part, provides:

OPINION 44

“In all school corporations of this state, where a school has been abandoned within the last twenty [20] years, or may hereafter be abandoned, the school trustees shall provide and maintain means of transportation for all pupils of such abandoned school who live a greater distance than one and one-half [$1\frac{1}{2}$] miles from the schools to which they are assigned; Provided, That township school trustees, boards of school trustees and boards of school commissioners may provide means of transportation for any pupils in any school district or school corporation, if the conditions in the school district or school corporation, in the judgment of the township trustee, board of school trustees or board of school commissioners warrant the same; Provided, further, That school trustees be and they are hereby empowered at their discretion to transport high school pupils * * *”

While the last referred to statute primarily pertains to the authority of school officials where schools have been abandoned, in an Official Opinion of this office, found in 1941 O. A. G., page 332, in construing said statute it was determined that the provisions contained in said statute must be construed to give broad powers to school authorities in the matter of providing transportation for public school pupils and it applies to cases other than where schools have been abandoned, for on page 333 of said Opinion, it is stated:

“The two provisos in the above quoted Section 2 appear to give broad powers to school authorities in the matter of providing transportation for public school pupils. A familiar rule of statutory interpretation is that provisos in an act are generally used to limit the meaning of the sentence or words which precede the proviso; that is, under such a view, the legislature intended where a school was abandoned, to give school authorities discretion in the matter of transportation regardless of the distance the pupils might be required to go. In my opinion this general rule of interpretation does not give sufficient force to the plain meaning of the words used. I believe by the use of

these provisos the legislature intended to confer upon Township School Trustees, Board of School Trustees and Boards of School Commissioners authority to provide transportation for school children, when in the discretion of such school authorities, the conditions, such as distance, roads, and other transportation facilities, made the transportation of the pupils advisable
* * *

I am therefore of the opinion the Metropolitan School District of Troy Township may provide transportation for students attending the elementary public schools of Tell City School Corporation although such children are attending such public schools on a private transfer tuition agreement.

OFFICIAL OPINION NO. 45

September 20, 1963

Mr. James C. Courtney, Commissioner
Indiana Department of State Revenue
Gross Income Tax Division
202 State Office Building
Indianapolis, Indiana

Dear Mr. Courtney:

This is in response to your requests for my Official Opinion in answer to several questions all related to the tax liability for the calendar year 1963 of natural persons under the "Gross Income Tax Act of 1933" and the "Adjusted Gross Income Tax Act of 1963." Although your questions are contained in two separate letters, because they are so inter-related and/or arise from the midyear transition from the 1933 Act to the 1963 Act, it is deemed advisable that these questions be considered together and that the answers there-to be consolidated into one Opinion.

The "Gross Income Tax Act of 1933," with which this Opinion is concerned, is the Acts of 1933, Ch. 50, Secs. 1 to 35, inclusive, as amended, as found in Burns' (1961 Repl.), Sections 64-2601 to 64-2632. The "Adjusted Gross Income Tax