

SCHOOLS:

The board of education of a school district (except a metropolitan school district which is not included in this opinion) may not enter into a written contract providing for the placing of advertising posters on the interior of school buses.

OPINION NO. 286

July 10, 1970



Honorable Jack E. Gant
State Senator
Sixteenth District
9515 East 29th Street
Independence, Missouri 64052

Dear Senator Gant:

This official opinion is issued in response to your request for a ruling on the following question:

"I have received an inquiry from the School Board of one of the school districts in my Senatorial District. This Board desires to know whether or not they may enter into a contract giving approval to an advertising firm to place advertising posters on school buses, with the school board retaining the right of approval of the advertising. From said advertising, the school board would receive 25% of the gross revenue with 10% being allocated to the bus contracting firm."

We were subsequently advised that this request pertains only to the placing of advertising posters inside school buses. Therefore, this opinion will concern itself solely with whether the school board has the power to enter into an agreement to place advertising inside school buses.

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In determining whether the school board has the power to enter into an agreement to place advertising in its school buses, it must be remembered that the board of directors of a school district is a creature of statute and that its members can exercise no authority unless the same is expressly conferred or arises by necessary implication from powers which are expressly conferred. In Wright v. Board of Education of St. Louis, 295 Mo. 466, 246 S.W. 43 (1922) the Missouri Supreme Court stated as follows:

"The power of the board to make the rule in this case is to be considered prior to a determination of its reasonableness. The power delegated by the Legislature is purely derivative. Under a well-recognized canon of construction, such powers, however remedial in their purpose, can only be exercised as are clearly comprehended within the words of the statute or that may be derived therefrom by necessary implication; regard always being had for the object to be attained. Any doubt or ambiguity arising out of the terms of the grant must be resolved in favor of the people. Watson Seminary v. Pike County Court, 149 Mo. loc. cit. 70, 50 S.W. 880, 45 L. R. A. 675, and cases; Armstrong v. School Dist., 28 Mo. App. 180; 25 R. C. L. p. 1091; section 306 and notes.

"This does not mean that the grant need contain a specification of each act authorized to be done, but that the words used be sufficiently comprehensive to include the proposed act. Express authority may be general as well as particular, and, although not defined in words, it must be clearly inferable from the purpose of the act." Id. at 45.

See, also, State v. Kessler, 136 Mo.App. 236, 117 S.W. 85 (1909); Cape Girardeau School District No. 63 v. Frye, 225 S.W.2d 484 St.L. Ct.Apps., 1949) and Consolidated School District No. 6 v. Shawhan, 273 S.W. 182 (K.C. Ct.Apps., 1925).

School districts have the power to contract only for those things which are within the scope and contemplation of their authority and power, McClure Brothers v. School District of Tipton,

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79 Mo.App. 80, 86 (1899) and Section 432.070, RSMo 1959.

Therefore, it is necessary to review the statutes authorizing school districts to provide bus transportation to ascertain if, either expressly or impliedly, the school district is authorized to enter into contracts permitting advertising to be placed on school buses. (In this review of the statutory authority underlying bus transportation in public schools, we will make no reference to statutes pertaining only to metropolitan school districts. The reason for this is that no metropolitan district is contained in your senatorial district and, therefore, we assume the district in question is not a metropolitan district.) The basic statute providing for transportation of pupils within all except metropolitan districts is Section 167.231, RSMo 1967 Supp., which states as follows:

"Within all school districts except metropolitan districts the school board shall provide transportation to and from school for all pupils living more than three and one-half miles from school and may provide transportation for all pupils living one mile or more from school. When the school board deems it advisable, or when requested by a petition signed by ten taxpayers in the district, to provide transportation to and from school at the expense of the district for pupils living more than one-half mile from school, the board shall submit the question at an annual or biennial meeting or election or a special meeting or election called for the purpose. Notice of the meeting or election shall be given as provided in section 162.061, RSMo. If two-thirds of the voters, who are taxpayers, voting at the election or meeting, are in favor or providing the transportation the board shall arrange and provide therefor."

Section 167.241, RSMo 1967 Supp. provides for the transportation of high school pupils to another district as follows:

"Transportation for high school pupils whose tuition the district of residence is required to pay by section 167.131 may be provided by either the school board of the district of residence or by the school board of the district attended but any cost incurred by the district attended in transporting a

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pupil in excess of the amount allowed for state aid as determined in section 163.161, RSMo, may be collected from the district of the pupil's residence."

Paragraph 3 of Section 178.260, RSMo 1967 Supp. provides for the transportation of exceptional children in the district in the following terms:

"Each board of education may provide transportation to and from school for all exceptional children in the district who cannot otherwise attend programs, and shall receive state aid for their transportation as provided in section 163.161, RSMo."

Section 171.131, RSMo 1967 Supp., authorizes the board of directors of an elementary school district to send pupils in grades 7 and 8 to an approved school in another district.

Section 171.121 provides that the State Board of Education has the power to require the board of a district which has an average daily attendance of less than 15 pupils to transport the pupils of the district to other public schools. Section 171.111, RSMo 1967 Supp., provides for the temporary combination of districts and for the transportation of pupils to a school house elsewhere.

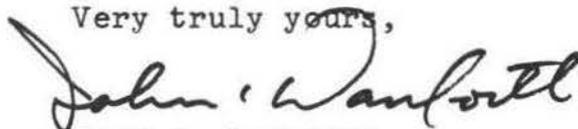
None of these statutes expressly authorize a school district to enter into contracts permitting advertising to be placed on school buses. Furthermore, we do not believe that this authorization is clearly comprehended within the words of any of these statutes or that this authorization can be derived therefrom by necessary implication.

CONCLUSION

It is, therefore, the conclusion of this office that the board of education of a school district (except a metropolitan school district which is not included in this opinion) may not enter into a written contract providing for the placing of advertising posters on the interior of school buses.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH
Attorney General