

March 16, 1971

OPINION LETTER NO. 9
Answer by Letter (Bartlett)

Mr. William F. Moore
4320 Bell
Kansas City, Missouri 64111



Dear Mr. Moore:

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

"I would like to request an opinion from your office on the legality of public funds, Federal and State, supporting the bussing of private or parochial school students under any circumstance."

With reference to the use of federal funds for supporting the bussing of private or parochial school students in Missouri, you furnish us no factual situation upon which we can rule, nor do you refer us to any specific federal program providing such funds in Missouri. We are reluctant to hypothesize facts upon which to base an opinion in this area. Therefore, we decline to rule on what the result would be under the Missouri Constitution if there were a federal plan authorizing moneys to be spent in this manner.

With reference to the expenditure of state funds to support the bussing of private or parochial school students, the Missouri Supreme Court in McVey, et al v. Hawkins, 364 Mo. 44, 258 S.W.2d 927 (1953) considered Missouri statutes then in effect which appeared to authorize the expenditure of public school moneys to defray the expense of transporting private school children to and from school. The Court concluded that such a use of public school moneys was not "for establishing and maintaining free public schools" as required by the Constitution:

". . . if the use of the fund or any part thereof is not within the purpose for which it was dedicated and appropriated, the use must be enjoined and the transportation discontinued." Id. at 932.

Honorable William F. Moore

Later, the Court stated:

". . . We must and do hold that the public school funds used to transport the pupils part way to and from the St. Dennis Catholic School at Benton are not used for the purpose of maintaining free public schools and that such use of said funds is unlawful. It necessarily follows that such transportation of said students at the expense of the district is unlawful and must be enjoined" Id. at 933-934.

Although the Court in the McVey case did not at any time use the term "unconstitutional", it did, by the language above quoted, directly hold that certain provisos of two Missouri statutes then in effect were in conflict with constitutional provisions. Therefore, the Court in effect held those provisos unconstitutional.

For a detailed analysis of the McVey decision we are enclosing herewith a copy of Opinion No. 96, dated August 25, 1953, to the Honorable Hubert Wheeler. In addition to the analysis of the McVey decision, the second question in this opinion is whether a board of education would have any legal basis for aiding private school transportation, assuming that the statutory provisions then in effect were nullified by the McVey decision. The opinion concluded as follows with respect to this question:

"Therefore, in order to justify the expenditure of public funds for aiding private school transportation, boards of education must be able to point to some legislative enactment consonant with the provisions of the Constitution which authorize such expenditure. Since the only statutory provisions purporting to authorize the payment of public funds for this purpose have been held in violation of the Constitution, and consequently null and void, there is no legal basis for boards of education to provide assistance from public funds for transportation of pupils to private schools whether they be elementary or high schools."

This office is aware of no language in any statute presently in effect in the State of Missouri which would authorize the expenditure of public funds for aiding private school transportation.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: No. 96, August 25, 1953, Wheeler.