

SCHOOLS:

In computing "the average cost of transporting all children of the district" and in computing "the additional cost of transporting handicapped and severely handicapped children" for the purposes of Section 162.985, RSMo 1973 Supp., all expenditures reasonably related to the school district's transportation program should be included in the computation. The amount of additional state transportation aid authorized by Section 162.985, RSMo 1973 Supp., with respect to handicapped and severely handicapped children should be determined by the following formula: a district's average cost of transporting a handicapped or severely handicapped child minus average per pupil cost of transporting all children in the district (handicapped, severely handicapped and non-handicapped) times the number of handicapped and severely handicapped children transported divided by two.

OPINION NO. 33

March 4, 1975

Dr. Arthur L. Mallory
Commissioner of Education
State Department of Elementary and
Secondary Education
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This is in response to your request for an official opinion on the following questions:

"Section 162.985, RSMo 1973 Supp. provides that districts transporting handicapped and severely handicapped children in accordance with applicable law, rules and regulations shall receive transportation aid in accordance with the schedule of payments set forth in Section 163.161, RSMo, and an additional amount 'equal to half the additional cost of transporting handicapped and severely handicapped children above the average per pupil

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cost of transporting all children of the district.' What expenditures can legally be included in computing 'average per pupil cost'? What expenditures may be included in computing 'additional cost for transporting handicapped and severely handicapped children'?

"Districts organized for 'vocational education and for the education and training of handicapped and severely handicapped children' will need a higher percentage of specially fitted and equipped vehicles for transporting pupils than will those districts serving all resident pupils. What expenditures can be included in computing average per pupil cost? What expenditures can be included in computing additional cost?"

Section 162.985 provides as follows:

"Transportation aid for handicapped and severely handicapped students attending classes within the school district, special district or nearby district under a contractual arrangement shall be paid in accordance with the schedule set forth in section 163.161, RSMo. In addition, an amount equal to half of the additional cost of transporting handicapped and severely handicapped children above the average per pupil cost of transporting all children of the district shall be apportioned where such special transportation is approved in advance by the state department of education and is in accordance with laws and regulations governing school transportation vehicles. If children are transported to regular public school programs and also to a special school for an appropriate special program, the district furnishing the transportation may qualify for transportation reimbursement for both programs if approved by the state department of education."

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Question No. 1

What expenditures can properly be included in computing "average per pupil cost?"

As used in Section 162.985, "average per pupil cost" relates to the average cost of "transporting all children of the district. . . ." You have not requested advice on the propriety of including a particular expenditure in the computation of this average. We decline to attempt to list all expenditures which should be included.

The General Assembly has given to the State Department of Elementary and Secondary Education and the State Board of Education the general responsibility for distributing state financial aid to school districts, including transportation aid. See Sections 162.985, 163.031, et seq., and 163.161. Therefore, the State Department of Elementary and Secondary Education or the State Board of Education should determine which expenditures are reasonably related to a district's transportation program and require that these expenditures be used in computing this average.

For years Section 163.161 has required that state reimbursement for transportation expenses cannot exceed the "actual cost per pupil" of a district's transportation program. Therefore, some guidance in determining expenditures to be included in the average per pupil cost of transporting all children of the district can be obtained from the practice of the State Board of Education and the State Department of Elementary and Secondary Education in enforcing the provisions of Section 163.161.

Question No. 2

What expenditures can be included in computing "the additional cost of transporting handicapped and severely handicapped children?"

As with the expenditures to be included in determining the average cost of transporting all pupils, you have not presented this office with any particular expenditure about which there is a question. We decline to attempt to list all appropriate expenditures. However, we believe that all expenditures reasonably related to the transportation of handicapped and severely

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handicapped pupils should be included in computing the additional transportation costs.

Question No. 3

With reference to special school districts organized pursuant to Section 162.825, et seq., what expenditures can be included in computing "average per pupil cost?"

The type of expenditures which can be included for special districts in computing "average per pupil cost" would be the same as for regular school districts. See answer to question No. 1.

Because special school districts transport vocational students as well as handicapped and severely handicapped students, a special school district's "average per pupil cost of transporting all children" should be somewhat less than the district's average per pupil cost of transporting handicapped and severely handicapped children. Therefore, a special district should have some "additional cost of transporting handicapped and severely handicapped children . . ." so as to qualify for special transportation aid under Section 162.985. Undoubtedly there would be less special transportation aid on a per capita basis for a special district than for a regular district because the "average per pupil cost of transporting all children" would probably be lower in most regular districts than in most special districts. This result seems somewhat anomalous in view of the fact that such districts carry the entire burden of educating handicapped and severely handicapped children in their areas. However, it is not our function to redraft legislative enactments.

Question No. 4

What expenditures can be included for special districts in computing "the additional cost of transporting handicapped and severely handicapped children?"

I believe this question is fully answered by the answer to question No. 2 herein.

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Question No. 5

How should the statutory formula in Section 162.985, RSMo 1973 Supp., be interpreted?

As a result of subsequent communication we understand you also request guidance in interpreting the statutory formula appearing in Section 162.985, RSMo 1973 Supp.

The statutory formula first calls for computation of average per pupil cost of transporting all children in the district since only costs in excess of this figure are eligible for state aid. Taking the term "all" in its ordinary meaning, we believe that the average per pupil transportation cost is to be computed by dividing all transportation costs (including those pertaining to handicapped and severely handicapped children) by the total number of pupils transported (including handicapped and severely handicapped children). Note that the statute does not refer to the average cost of transporting "all other" children. In the absence of a term such as "other" average cost must be determined on the basis of both handicapped, severely handicapped, and non-handicapped children.

The statute then provides that school districts shall receive aid in the amount of one-half of the additional cost above this average figure. The statute speaks of this additional cost in terms of a gross amount, but then provides that it must be in excess of an average amount. Thus, although the statute does not specifically provide for the computation of another average figure, we believe that this must be done in order to arrive at a logical cost figure. In the context of the statute, we believe the second average figure must be the average cost of transporting handicapped and severely handicapped children.

Thus, the additional cost of transporting handicapped and severely handicapped children is the average per pupil cost of transporting such children minus the average per pupil cost of transporting all children times the number of handicapped and severely handicapped children transported. One-half of this difference is the amount of state aid.

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As to how this formula applies to special school districts organized for "vocational education and for the education and training of handicapped and severely handicapped children" we believe that the above computations should be made on the same basis as regular school districts.

CONCLUSION

It is the opinion of this office that in computing "the average cost of transporting all children of the district" and in computing "the additional cost of transporting handicapped and severely handicapped children" for the purposes of Section 162.985, RSMo 1973 Supp., all expenditures reasonably related to the school district's transportation program should be included in the computation.

It is the further opinion of this office that the amount of additional state transportation aid authorized by Section 162.985, RSMo 1973 Supp., with respect to handicapped and severely handicapped children should be determined by the following formula: a district's average cost of transporting a handicapped or severely handicapped child minus average per pupil cost of transporting all children in the district (handicapped, severely handicapped and non-handicapped) times the number of handicapped and severely handicapped children transported divided by two.

This opinion, which I hereby approve, was prepared by my assistant, Robert Presson.

Very truly yours,



JOHN C. DANFORTH
Attorney General