

✓ SCHOOLS: -  
SCHOOL DISTRICTS: -  
Distance of pupil from school house calculated, How.

17-2  
November 27, 1933



Honorable Dewey A. Routh  
Prosecuting Attorney  
Nevada, Missouri

Dear Mr. Routh:

This Department acknowledges receipt of your letter dated November 18, 1933, which is as follows:

"It may not be unusual to have an apparently non-essential point of law to arise and trouble you, but I have one that seems to be causing considerable dissension in one of the school districts in Vernon County.

One of the parents in this school district has a farm so situated that the gate entering into the farm is slightly under three and a half miles from the nearest school. However the house on the farm stands back from the road quite a bit and the door of the house itself is approximately three and three-fourths miles from the nearest school.

The new transportation law as set forth in Section 9453 and found on page 388 of the Session Acts of 1933, which reads as follows: 'Provided however, no transportation shall be furnished if there be any school within three and a half miles of such pupil\* \* \*.' My interpretation of this law would be that distance would start from the home as that is where the pupil would be, and the law says 'three and a half miles of such pupil.' However, when the State School Inspector was here, this question was put to him and he said that he would not know, but presumed

it would mean from the home.

We will appreciate your sending us your opinion in this matter and if it would not be too much trouble, send a copy of this opinion to the President of the Board of Directors of Bronaugh School District of Bronaugh, Missouri."

The statute for construction is Section 9354 Laws 1933 page 388, the same reads in part as follows:

"The question of transportation of pupils may be voted upon at the special meeting above provided for, if notice is given that such a vote will be taken. If transportation is not provided for in any school district formed under the provisions of sections 9351 to 9358, inclusive, it shall then be the duty of the board of directors to maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district: Provided, transportation of pupils or the maintenance of elementary schools within three miles and a half of each child of school age in the district shall not be required in consolidated districts now or hereafter organized under the provisions of sections 9351 to 9358, inclusive, where such consolidation has not placed said children further from an elementary school than they were prior to said consolidation: Provided however, no transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 18 of an act of the 56th General Assembly, found on page 344, Laws of Missouri, 1931.\*\*\*\*\*"

Sections 9351 to section 9358, both inclusive, provide a scheme for the organization of consolidated school districts for the purpose of maintaining both elementary and high schools. Section 9353 makes provision for the holding of a special meeting for the purpose of effecting the consolidation or organization of such districts.

Section 9354 as amended by Laws 1933, page 388, provides that the question of transportation of pupils to and from school may be voted upon at the special meeting whereat the district is consolidated or organized, if notice is given that a vote on the question of transportation will be taken. If transportation is not provided for in such a district the board of directors thereof is required to maintain an elementary school within three and one-half miles from the home of every child of school age within the district, the distance to be calculated by the nearest traveled road between the two points. However, the maintenance of such elementary schools nor the transportation of pupils within such a district is not required where such consolidation has not placed children in the district further in distance from an elementary school than they were prior to the consolidation or organization. If there is a school in a district, other than the district in which the pupil lives, within three and one-half miles of such pupil then the district in which the pupil lives is not obliged to furnish such pupil transportation to the school in the district in which the pupil lives, but the county Superintendent of Schools shall have the power and it shall be his duty to assign such pupil to such adjoining district and the pupil is required to attend the school in the latter district.

The question at hand is to determine in what manner the distance shall be calculated in order to ascertain whether or not there is a school in an adjoining district to that in which the pupil lives, and within three and one-half miles of such pupil.

We think it is clear from the authorities that in determining the question of distance the distance is to be calculated along and by way of the nearest traveled road. We think the words "of such pupil," mean within three and one-half miles of the home of such pupil, so that properly construed Section 9354 means as if it read,

'No transportation shall be furnished if there be any school within three and one-half miles of the home of such pupil and such distance shall be calculated along and by the nearest traveled road.'

The case of Board of Education v. Board of Education 20 Ohio N.P.N.S. 698, the court had under consideration a statute, in some respects, similar to ours and which provided that when pupils lived more than one and one-half miles from the school to which they are assigned in the district where they reside, they may attend a nearer school in some other district and the district in which the pupil lives shall pay the tuition to the other district. In the Ohio statute the words "nearest traveled road"

are not used. On the question of how to calculate distance in order to determine whether a pupil lived more than one and one-half miles from a school, the court at page 699 of the opinion said:

"It would not be proper to measure the distance on a straight line, 'as the crow flies', across the fields, as the children, without the consent of the owners of the fields, would thereby become trespassers. Besides, under the provisions of the statutes of Ohio, children who reside in school districts in the country, living more than one half mile from the school, and residing at not a greater distance than one half mile from a public highway, are entitled to be carried to school in a public conveyance, at the expense of the school fund in the district. Necessarily, they would be carried thus along the highway. And, whether the children go by public or private conveyance, or whether they walk to and from school, they are expected to go by the most direct and convenient highway, and the length of that course determines the distance from home to school.

Therefore, the ruling of the court is that, in estimating the distance from the home to the school, the measurement begins at the exit from the curtilage - ordinarily the front gate - from which, if it is not on the highway, thence along the most direct established route, by lane or path to the nearest highway, thence following the center line of the most direct course in the highway to the door of the school building."

The holding is that the distance is to be measured from what is commonly known as the outside line of the yard surrounding the house, to the door of the school building. The opinion does not seem to take into account the yard ordinarily surrounding the school building.

In *Eastgate v. Osage School District* 171 N. W. 96, the court had under discussion a question that involved the transportation of school children; the court at page 98 of the opinion said:

"In some of the above laws, the words 'nearest route' are used; where so used they are held to mean the nearest public route or one which has been duly authorized or exists by law."

In *Pagel v. School District Number 1*, 199 N. W. 67, the court had under consideration a statute of the State of Wisconsin with reference to transportation of school children, wherein it provided that:

"The word 'distance' shall be interpreted to mean distance as measured by the nearest traveled highway."

It was contended that in ascertaining the distance involved in that case a private highway or roadway leading from the public road to the home should not be considered. The court with reference to such contention said:

"It certainly was not the intent of the Legislature to exclude from the beneficent purposes of the statute children who were so unfortunate as to be located away from the public highway. The purpose of the statute defining distance was to ascertain the necessity for transportation for children, and hence to determine whether by the nearest traveled road they were located more than two miles from school."

*Purkeypyle v. School District Number 101*, 275 Pac. 146, involved a question of whether or not certain children lived three or more miles, by the usually traveled road, from the school they attended. On the question involved the court at page 147 of the opinion said:

"The statute provides transportation or compensation in lieu thereof for pupils who live three or more miles from the school attended. Where do these pupils live? Certainly not in the middle of the road; neither do they attend school in the center of the road in front of the schoolhouse. Another measurement submitted was from gate to gate. It can as truthfully be stated that they do not live at the front gate, nor attend school at the gate. Children live in the house which they call their residence, and that may be in the center of a cattle ranch, or pasture, a half mile or more from the

public highway, and there is no good reason for not measuring that distance over a private driveway, or private walk, if it is the usually traveled road from that house to the school.

We have examined all the citations of the appellant on the question of reasonable construction, and agree with all of them, but think the reasonable construction of the statute here under consideration requires such measurement to be from the house where the pupils live to the school where they attend, and such entire distance to be by the usually traveled road between the two places. There is a usually traveled road from every private dwelling to the public highway, although the travel over it may be limited to the family; it is for them such a road nevertheless.

No specific authorities as to points of beginning and ending such measurements have been cited by either appellant or appellee, nor have they referred to any explicit precedent; but both parties urge a determination to be based upon a reasonable construction of the statute involved. We have no hesitancy in concluding that the evident intent of the Legislature in this enactment was the actual distance from the residence to the schoolhouse by the usually traveled road, and that the language of the statute does not justify the conclusion by reference to the road that the distance was to be limited to that which was over or along some public highway."

Under the last proviso of Section 9354 if there be a school within three and one-half miles of the home of the pupil transportation shall not be furnished, but the pupil shall be assigned to another school district for the purpose of attending school. The right to transportation is based on distance. If there be a school maintained in the adjoining district within three and one-half miles of the home of the pupil, then that entire distance of three and one-half miles must be traveled by the pupil from the door of its home to the front door of the school house. The distance traveled by the child from the front door to the front yard requires the same energy as is required in taking the same number of steps along a traveled

highway. The decisions are clear that a lane or private road leading from a highway through an inclosure to a home is as much a part of the distance to be traveled, in calculating distance with reference to transportation of children to school, as is the main public and traveled highway itself.

We are not now dealing with the transportation of school children by carriers, the mileage of same nor where school children are entitled to enter or leave the transporting conveyances.

Under the particular section of the statute under consideration we are of the opinion that the distance involved, is to be measured from the door of the home of the pupil nearest the school house along a private lane or roadway, if any, to the main traveled highway, thence along such main traveled highway to the front door of the school house in question.

Very truly yours,

GILBERT LAMB  
Assistant Attorney General,

APPROVED:

---

ROY McKITTRICK  
Attorney General.

GL:LC