

SCHOOLS: A contract with a bus company for free transportation of students is illegal because it does not conform to Section 9197, R.S. Mo. 1929.

10-24
October 23, 1933.



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Hon. H.L. Stolte,
Representative Gasconade County,
Hermann, Missouri.

Dear Sir:

Your letter of October 14, 1933 addressed to General McKittrick has been handed to me for reply. The facts as set out in your letter are as follows:

"The facts are that in the summer of 1932 the Board of Education of Hermann, Missouri entered into a contract with several bus lines for free transportation of students from outlying districts to the High School here in Hermann, Mo., the Board having agreed to pay all expenses out of the general revenue for such transportation without any charge on the student whatsoever and without submitting the matter to the voters of the district here in Hermann, and have since issued vouchers on the incidental fund of the district.

Please advise me here at Hermann and give me your opinion whether such action on the part of the Board of Education is permissible and in accordance with law."

I.

A contract with a bus company for free transportation of students is illegal because it does not conform to Section 9197, R.S. Mo. 1929.

Section 9197, R.S. Mo. 1929 provides the method by which free transportation may be obtained, said section being as follows:

"Whenever the board of directors of any school district or board of education of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district, to provide for the free transportation to and from school, at the expense of the district, of pupils living more than one-half mile from the schoolhouse, for the whole or for part of the school year, said board of directors or board of education shall submit to the qualified voters of such school district who are taxpayers in such district, at an annual meeting or a special meeting, called and held for that purpose, the question of providing such transportation for the pupils of such school district: Provided, that when a special meeting is called for this purpose, a due notice of such meeting shall be given as provided for in section 9228. If two-thirds of the voters, who are taxpayers, voting at such election, shall vote in favor of such transportation of pupils of said school district, the board of directors or board of education shall arrange for and provide such transportation. The board of directors or board of education shall have authority and are empowered to make all needful rules and regulations for the free transportation of pupils herein provided for, and are authorized to and shall require from every person, employed for that purpose, a reasonable bond for the faithful discharge of his duties, as prescribed by the board. Said board of directors or board of education shall pay by warrant the expenses of such transportation out of the incidental fund of the district."

From the foregoing section we glean that the following conditions must be carried out: (1) ten taxpayers must request the Board of Directors by a petition to provide for free transportation of pupils; (2) The Board of Directors or Board of Education must submit the question to the qualified voters of the district at an annual or special meeting called and held for that purpose.

From your letter we assume that neither condition was complied with at the time the contract was entered into with the bus lines.

Section 2962, R.S. Mo. 1929 deals with contracts by school districts and is as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

Under this section the School Board has no power to enter into a contract unless the same shall be within the scope of its powers or be "expressly authorized by law."

We are unable to cite any Missouri decisions wherein the question of transportation has arisen on a contract, but in the case of Terry v. Board of Education, 84 Mo. App. 21, l.c. 25, the general principle of law is embodied. In this case the Court said:

"The two charters under which the defendant has existed since 1833, created it a public corporation and school district, charged with the duty of educating the children residing within its territorial limits. State ex rel. O'Connell v. Board of Pub. Schools, 112 Mo. l.c. 218. In 1874 the legislature passed a law restrictive of the power of school districts and other corporations of a like character. By this act to make any contract of such corporation valid, it must first appear that it is within the scope of their corporate powers, and it must next be shown that the contract in question arises upon a consideration to be rendered subsequent to its making, and that it was in writing and duly executed. R.S. 1889, Sec. 3157; Acts of 1874, page 44. The legislature had full power to prescribe this mode of authenticating the contracts of school districts, and also to condition the enforceability of such contracts upon compliance

with these requirements. It has done so. Hence the contract of plaintiff not being in accordance with the statute, imposed no obligation upon the former school board, nor upon the defendant as its successor, in duty, as well as in right."

Likewise, in the case of Miller v. Alsbaugh, 2 S.W. (2d) 208, 1.c. 211-12, the Court said:

"Under this statute no valid contract could be executed by which the school district would be bound to employ any person to drill a well unless the school board should authorize the well to be drilled and should also authorize the employment of a certain designated person to do the work. The board could, by order of record, appoint an agent to execute a contract as provided in the latter part of the section, but the members of the board, when the board was not in session, could not employ a party to drill the well unless the board as a board in a meeting lawfully held had first authorized them to do it. If we concede that the meeting held in April, 1915, before the work was done, was a legal meeting of the school board, and admit that, although no record was made of what was done at that meeting, its proceedings could be proven by parol, which we do not concede, yet all that was done at that meeting was to determine to have a well drilled. Not a word about who should be employed to drill it nor a word about the terms of the contract to be entered into nor the person to be employed nor who should execute the contract on the part of the school board. Certain it is that nothing was done that could confer any authority upon the two members of the board, Miller and Ragland, to employ Mr. Edwards or any other person to drill the well. That being true, the oral agreement they made with Mr. Edwards was a nullity and could not be used as a basis for recovery for the agreed price of the work. *****Neither could the school district be held for the value of the work after it was done. No recovery can be had against a school district upon quantum meruit nor upon an implied contract. The fact that the school district got the benefit of

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the work and continues to use the well does not give any right of action against the district. Taylor v. School District No. 3, 60 Mo. App. 372; Perkins v. School District, 99 Mo. App. 483, 488, 74 S.W. 122."

From the foregoing decisions, and after applying the same to the facts as stated in your letter, it is the opinion of this department that the contract with the bus lines for free transportation of students to the High School at Hermann is invalid.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

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