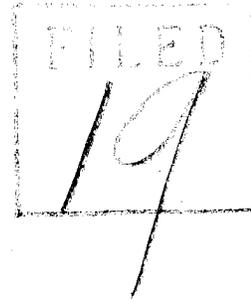


SCHOOL DISTRICTS:-Under Sections 9197 and 9354, R. S. Mo. 1929, and
TRANSPORTATION: Section 16, Laws of 1931, page 334, a two-thirds
majority vote is required where the question is
voted upon by the taxpayers of the district.

11-9
October 2, 1934.



Mr. Chas. C. Crosswhite, Statistician,
Department of Education,
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in
which you inquire as follows:

"According to Sections 9197, 9354 and
16, Laws of 1931, is a majority or a
two-thirds vote of the tax-payers re-
quired when incidental funds are to be
used by a school district in providing
transportation for high school pupils?"

You inquire whether under the above sections
a majority or a two-thirds vote of the tax-payers is
required in order to provide transportation for high
school pupils. Section 9197, R. S. Mo. 1929, provides
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 transporta-
tion to and from school, at the ex-
pense of the district, of pupils liv-
ing more than one-half mile from the
school-house, 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 the 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 meet-
ing 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."

Under Section 9197 it is specifically provided that it takes a two-thirds vote in favor of the board of directors transporting the pupils.

Section 9354, R. S. Mo. 1929, was amended by the laws of 1933, page 388, and now reads 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. Provided further, that when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district. Such transportation shall be paid for out of the incidental funds of the district: Provided further, that if transportation is not provided for, any consolidated district may, by a majority vote at any annual or special meeting, decide to have all the seventh and eighth grade work done at the central high school building, provided, fifteen days' notice has been given that such vote will be taken. Such seventh and eighth grade work at the central high school may be discontinued at any time by a majority vote taken at any annual or special meeting."

Under Section 9354 above the fact is not stated whether the vote shall be a majority vote or a two-thirds vote. Section 9354 deals with city, town and consolidated schools. If section 9354 specifically provided that only a majority vote of the taxpayers was necessary in voting transportation, then all city, town and consolidated schools would be under that provision. Since, however, section 9354 does not provide whether the vote required be a majority or a two-thirds majority, then it appears to us that we must refer back to section 9197 above, which applies to all classes of schools, in order to determine this question.

There being no special provision determining this matter as applying to city, town and consolidated schools we are compelled to refer to the general section which applies to all classes of schools, and under the general section, to-wit, 9197, which applies to all classes of schools, a two-thirds vote is necessary. We therefore believe that under section 9354 a two-thirds vote is necessary to provide transportation, except where under the very provision of the act, the attendance falls below ten, then the school board is authorized to

close the school and provide transportation.

Laws of 1931, Section 16, page 343, provides as follows:

"The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per-pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota; if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year; but the attendance of such pupil shall not be counted in determining the teaching units of the district maintaining the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental expenses. In case of any disagreement between districts as to the amount of tuition to be paid, the facts shall be submitted to the state superintendent of schools, and his decision in the matter shall be final: Provided further, that when any school district makes provision for transporting any or all of the children of such district to a central school or schools and the method of transporting and the amount paid therefor is approved by the state superintendent

of schools, the amount paid in state funds for transportation, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district: Provided, the provision of this act regarding the payment of tuition and transportation shall apply if the students attend any school supported wholly or in part by state funds."

Section 16 above does not provide whether the vote necessary shall be a majority vote or a two-thirds vote. Since that section does not specifically provide as to which vote shall determine the question of transportation, we are compelled again to refer to the general section which applies to all classes of schools, which is section 9197, and under section 9197 a two-thirds majority is required. If it were not for section 9197, which deals with all classes of schools and provides a two-thirds majority, it might be said that under section 9354 and section 16 that a majority vote is all that is required. This would be on the theory that only a majority vote is required generally upon any proposition, except where the statute makes a provision to the contrary. However, where there is in existence a statute applying to all classes of schools which requires a two-thirds majority, and since the statutes dealing with particular schools are silent as to whether a majority or two-thirds majority is required, it appears to us that the matter must be governed by the statute applying to all classes of schools, which in this case requires a two-thirds majority

Since section 9354 and section 16 are silent as to whether a majority or two-thirds majority is required, to hold that a simple majority only is required would be in effect to ignore the provisions of section 9197, which applies to all classes of schools. We believe, however, that full effect must be given to section 9197 which applies to all classes of schools, where the sections applying to particular classes are silent or contain nothing which conflicts therewith.

It is therefore the opinion of this Department that under sections 9197 and 9354, R. S. Mo. 1929, and section 16, Laws of Missouri 1931, page 334, that a two-thirds majority is required where the question of transportation is voted upon by the taxpayers of the district.

Very truly yours,

APPROVED:

FRANK W. HAYES,
Assistant Attorney General.