

SCHOOLS:

A school district may lawfully enter into a contract with another district to transport its pupils and pay the difference between what the State actually pays and the amount stated in Section 16a, Laws Mo. 1935, p. 352.

May 27, 1936.



Honorable Wayne V. Slankard
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Mr. Slankard:

This is to acknowledge your letter as follows:

"I would like to have your opinion on the following:

"The Board of Directors of a school district that does not maintain an approved high school pays for the transportation of high school pupils residing within the district to an approved high school in another district. The amount they pay is the difference between the maximum of \$3.00 provided for in Sec. 16A, pg. 352, Laws of Missouri 1935 and the amount which the state actually pays on the \$3.00.

"In other words, the district in which the improved high school is located collects from the state for this transportation and then charges the district from which the pupils come, the difference between the amount actually paid by the state and the \$3.00 maximum making a total of \$3.00 provided for in the statute.

"The Board of Directors from the district in which the pupils reside pays this money out of the teacher's fund. Does the Board of Directors of the district in which the pupils reside have the power, and is it

legal for them to pay for this transportation."

Section 16a, Laws of Missouri, 1935, page 352, relates to the transportation of pupils. A reading of such shows that the State grants an aid to the schools transporting pupils. You will note that said section divides itself into three classifications, namely: (1) Transporting of pupils to a central school, or schools, within the district; (2) transporting pupils to adjoining high schools by resident school district; (3) transporting non-resident pupils by a high school that admits such.

Said section reads as follows:

"When any school district makes provision for transporting any or all of the pupils of such district to a central school or schools within the district, and the method of transporting is approved by the state superintendent of schools the amount paid 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 for the ensuing year. When the board of directors of any school district makes provision for transporting the high school pupils whose tuition it is obligated to pay, to the school or schools they are attending, and the method of transporting is approved by the state superintendent of schools, the amount paid for transporting such pupils, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the state apportionment to such district for the ensuing year, if no part of the minimum guarantee of

such district has been used to pay any part of the cost of transporting such pupils. When the board of directors of a district that admits non-resident pupils to its high school makes provision for transporting such pupils to such high school, and the method of transporting and the transportation routes are approved by the state superintendent of schools before the transportation is begun, the amount spent for transporting such pupils, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the state apportionment to such district for the ensuing year, if no money apportioned to such district from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transporting such pupils."

There is nothing mandatory, in the above section, on school districts to transport pupils, it being purely discretionary with the board of directors, and if said board makes provision for transporting of pupils the district receives a special aid from the State. The aid thus received from the State is separate and apart from other aids and used solely to pay for transportation. The special aid will not be paid by the State if moneys apportioned to such district "from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transporting such pupils." Thus making the cost of transporting being borne solely from the special aid and moneys derived from taxation.

While Section 16a provides for three classifications, yet, state aid will only be paid to the one district. Thus, if the board of directors of the school district (mentioned in your letter) enters into an agreement with the receiving high school for the transporting of said district's pupils, and the receiving high school agrees to transport, state aid

can only be paid to the high school and not to both districts, even though both make provisions for transporting. We do not find any specific statutory authority authorizing the paying of the difference the state fails to pay, if any, by the sending school district to the receiving high school. Neither do we find any statute or case that prohibits the paying of the difference, if any, by the sending school district. Absent such statute or case, we conclude that the district of residence would have the right to enter into an agreement with the receiving high school in order to pay the difference between what the statute provides what the State shall pay and what the State actually pays.

We conclude, that in order to have its pupils transported the district of residence could obligate itself by a contract with the receiving high school to pay the transporting high school the difference what the State fails to pay of its stated \$3.00 per pupil transported, and would in our opinion be legal and within the powers of the resident board of directors. However, the board of directors cannot pay the difference out of its teachers' fund, in view of Section 9311, R. S. Mo. 1929, which in part provides as follows:

"The species of indebtedness must be clearly stated and should be drawn on its appropriate fund; all moneys for the teachers' wages on the teachers' fund; all moneys used in the purchase of a site, erection of a building thereon, and furnishing the same, on building fund; and all other expenses to be paid out of the incidental fund; "

It is our further opinion that the payment of the difference by the resident school district would have to be out of the incidental fund; the incidental fund being derived

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from taxation.

See, also, Sections 9312 and 9233, R. S. Mo. 1929; State ex rel. to use of Gastineau v. Smith, 196 S. W. 115.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

JLH:EG