

SCHOOLS: Transportation of High School Pupils.

May 11th, 1939.

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Mr. F. M. Brady,
Prosecuting Attorney,
Benton County,
Warsaw, Missouri.



Dear Mr. Brady:

This will acknowledge receipt of your letter of April 17th, last, requesting an opinion from this office, and from which letter we quote as follows:

"At a common school district in Benton County, Missouri, a proposition was submitted to the voters at the Annual School Meeting for the district 'to provide free transportation for all the high school pupils of the district to a high school outside of the district, at the expense of the district'; the proposition carried by a majority vote of the meeting, but not by a two-thirds majority. The annual meeting also voted a tax levy to provide the necessary funds to carry out the transportation of the high school pupils, but the board of directors of the district are opposed to the proposition of providing any transportation for the high school pupils.

I would like to have you advise me if under the facts, as outlined and the law can the school board be required to provide for free transportation of the high school pupils

to a high school outside the district, there being no high school in this district."

Section 9197, R. S. No., 1929, which was first enacted at the 1911 session of the Legislature, constitutes the basis for free transportation of public school pupils. Such section provides in part 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 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:

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."

It is reasonably apparent from the context itself that the foregoing statute relates to the transportation of pupils within the district in which they reside. An added reason, however, if necessary, would be the fact that in 1911 there was no provision whereby

rural students living in a district where there was no high school, could, when ready for high school, attend at the expense of their home district, a high school located in another district.

By reason of the revision of the school laws in 1931, provision was made whereby a pupil of a school district which did not maintain a high school could attend an approved high school in another district, at the expense in part of his or her home district. While transportation was provided for in the 1931 laws, yet the language used apparently limited transportation to that within a district.

This feature of the 1931 Laws relative to transportation may have brought about the rewriting of the Act in 1935, which is Section 16a, Laws of Mo., 1935, page 352, and 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,

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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."

We have underscored that part of the last mentioned section which we believe applies to the case you state, namely, the transportation of high school pupils to a high school outside of their district.

You will note that the first part of the section relates to transportation within the district and authorizes the district under such circumstances to make provisions therefor. This comports with Section 9197 wherein the taxpayers of the district are required to vote on the proposition. So far as the provision for transportation of pupils entirely within

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a district is concerned, we find no repeal or amendment, express or implied, of Section 9197, save as to the cost of transportation which by the 1935 Act is indirectly paid by the state instead of by the district as called for in Section 9197.

You will further note that the part of the 1935 Act which applies to your case authorizes the board of directors, without qualification or limit as to such authority, to make provision for transportation to a high school outside the district in question, that is to say, such authority is not limited to submitting the proposition to the vote of the taxpayers; and the Act further provides in this instance that the cost of such transportation is paid by the state.

To the extent noted, the 1935 Act modified Section 9197 so far as a vote of the taxpayers is concerned.

Consequently, the vote in the case you recite was unnecessary and the only purpose it could serve would be to advise the board as to the sentiment of the patrons respecting the question of transportation.

While as we said there is no qualification of authority on the part of the board to make provision for transportation of pupils to a high school outside of the district, yet there does not appear to be any kindred provision in the act to compel the board to do so if it deems such action inadvisable. We note that the board in your case is opposed to the proposition, however, such opposition may be due to misapprehension relative to where the cost of transportation may come from.

We might add that on checking your question with the state department of schools, we find that it has been pursuing ever since the enactment of the 1935 Act, the views we herein express, that is, that no vote of the taxpayers is required for transportation of pupils to a high school outside the district in which the pupil resides.

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Our conclusion is that the Board of Directors is authorized without vote of the taxpayers to provide transportation, where such district does not maintain a high school, for pupils who attend an approved high school in another district of the same or an adjoining county; and that such district so transporting its pupils will be paid or reimbursed by the state in the appropriation of state funds to such district not to exceed three dollars per month per pupil transported two miles or more.

Very truly yours,

J. W. BUFFINGTON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General

JWE RV