

SCHOOLS: Transportation of school children under Section 9197, R. S. Mo. 1929, should be provided for children living more than one-half mile from the schoolhouse, but it is not necessary that transportation be made from the door of the home to the door of the schoolhouse.

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Honorable Charles W. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Sir:

Sometime ago you submitted the following letter concerning which you desire our opinion:

"The village of Avalon, Missouri, in this county has a consolidated school district. Transportation has never been voted by the district but I believe certain outlying rural schools were maintained as a part of the district. A few years ago the attendance at one of these rural schools embraced within the consolidated district fell so low that the school was closed by the directors with the consent of the State Department of Education. The school board furnished a limited transportation to the pupils of the school that was closed. One pupil in particular who had been afflicted with infantile paralysis was allowed the sum of \$1.00 per school day for transportation to a rural school adjoining the Avalon school district. Before the school was closed he had to walk $1\frac{3}{4}$ mile to school. The boy has recovered from his affliction and the Avalon School Board proposed in the beginning of this year to send a bus to the end of the gravel road which is within $1\frac{1}{2}$ miles of the home of this boy and furnish him free transportation from this point to the Avalon

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school or should this not be satisfactory to the parents of the boy to allow them 45¢ per school day in lieu of transportation. The parents of the boy are insisting upon a continuation of the \$1.00 per day allowance. Does the school board have a right to stand upon its offer to furnish transportation as indicated above or do they have to pick the boy up at his home?"

You refer to the district as being a consolidated school district and state that the district has never voted transportation for the other rural districts which may be embraced in the consolidated district.

The 1939 session of the Legislature, page 719, Laws of Missouri, 1939, section 9197, amended the original Section 9197 so that said section now reads 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

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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. Provided that this section shall include pupils attending private schools of elementary and high school grade except such schools as are operated for profit."

Likewise, Section 16a, page 720, was amended, and insofar as the same relates to transportation is 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. * * * *"

The above sections are quoted for the reason that we are not entirely clear, from the facts contained in your letter, as to under what section the school provides for transportation.

You further state in your letter that "a few years ago the attendance at one of these rural schools * * * *"

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was closed by the directors with the consent of the State Department of Education." This would indicate that the school was abandoned in accordance with Section 20, Laws of Missouri, 1931, page 346, which is as follows:

"If any district in this state shall have an average daily attendance of less than 15 pupils as shown by the records of the last previous school year, the state superintendent shall, in lieu of such state aid, after investigation that convinces him that it would be to the best interests of all concerned, require the board to provide for the transportation of the pupils of such district to other public school or schools, provided that the total expense, including transportation and tuition paid by the state, shall not exceed the amount that the state would have otherwise paid to such district."

There appears to be no provision in the statute for reimbursing the student, due to physical affliction, at the rate of \$1.00 per day for transportation, even though it may appear to be just and proper. However, we assume that the student was classified under Section 9218, R. S. Mo. 1929, the pertinent part being as follows:

"Whenever in any school district there shall be found ten or more children who are blind, or who are deaf, or who are crippled, but yet able to be moved about, or who are feeble-minded and yet capable of instruction, the board of education or board of directors of the district may provide appropriate instruction in a special class for such groups of ten or more of each class of defectives, and shall provide transportation to and from school for such children as could not otherwise attend.* * *"

School boards are created by statute and derive their powers solely from the same, and since the child has recovered

the statute does not give them power and authority to allow 45¢ per day. The statutes empower the board to make all needful rules and regulations for the free transportation of pupils. It further provides that free transportation shall be provided to and from school, at the expense of the district, of pupils living more than one-half mile from the schoolhouse.

The pertinent part of Section 9354, Laws of Missouri, 1933, page 388, is as follows:

"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: * * *"

Section 9197, R. S. Mo. 1929, seems to be comprehensive in its terms. We quote the pertinent 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 tax-payers 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: * * * * *"

Conclusion

When all the statutes are considered and harmonized, we are of the opinion that the school board may be compelled to furnish transportation for the student in question because said pupil lives more than one-half mile from the schoolhouse, but that it was the intention of the Legislature that actual transportation from the door of the home to the door of the schoolhouse should only be furnished as far as reasonably practicable.

Respectfully submitted,

OLLIVER W. NOLEN
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APPROVED:

W. J. BURKE
(Acting) Attorney-General

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