

SCHOOLS:
TRANSPORTATION:
CONSOLIDATED DISTRICTS:

The board of directors of consolidated districts, unless authorized by vote of the electors of the district, may not provide for transportation of pupils in elementary schools except where the average daily attendance falls below ten.

April 12, 1939

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Mr. George H. Miller
Prosecuting Attorney
Hickory County
Hermitage, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an official opinion on the following question:

"Will you please send me an opinion upon the following question: Does the Board of School Directors in a consolidated district have the authority to close a rural school and transport the students to a central location, regardless of the average daily attendance, without a vote by the residents of the district?"

The sections of the school law applicable to transportation of children are as follows: Section 9354, R. S. Mo. 1929:

"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 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."

Section 9197, R. S. Mo. 1929, provides:

"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."

By these sections it will be seen that the transportation of school children is authorized in the following cases:

1. When authorized by vote of the tax-paying resi-

dents of the district;

2. When the average daily attendance in an elementary school falls below ten the school board has authority to close such elementary school and transport the pupils to some other school;

3. In case transportation is not voted and authorized as provided by Section 9197, supra, then by a majority vote the seventh and eighth grade pupils may be transported to the central high school building of a consolidated district.

Under Section 9354, supra, which refers to consolidated school districts, if transportation is not authorized by the proper vote of the resident taxpayers, then it is mandatory on 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 in the district except those children who are not placed farther from the elementary school by reason of the consolidation of the district. In State ex rel. Miller et al. v. Board of Education of Consolidated School District No. 1, 21 S. W. (2d) 645, 648, in speaking of the duties of the school board towards maintaining schools, the court said:

"* * * * * And it is equally well settled that a board of education cannot be required to conduct school in certain locations within the district unless it is first shown, among other things, that suitable buildings in which to conduct said schools are at said locations or that sufficient funds have been provided with which the board can construct suitable buildings at such locations. * * * * *"

In other words, before the board can be required to do any of the things necessitating the expenditure of the district funds, such funds must be provided by taxation or otherwise.

On the question of the authority of a school board to use the public funds for transporting children, we find the rule stated in Volume 56 C. J. page 832 at Section 1038,

in the following language:

"In the absence of express statutory authorization to transport pupils to and from district schools, no such authority can be implied from the duty imposed on the school trustees to secure to the children of the district the right and opportunity of equal education or from a statute authorizing trustees of a consolidated school district, or of a discontinued school, to use school funds for transportation, or from a statute authorizing classification of school districts into elementary and high school districts but providing that the classification shall not be so made as to deprive any child of opportunity to attend a school properly classified within the stipulated distance of his home unless free transportation for such child shall be provided, * * * * *

And in Volume 63 A. L. R., page 414, the rule on this question is also stated in the following language:

"In the absence of express statutory power, a school board is not authorized to expend money for the carrying of children to school. * * * * *

It will be seen that before the board is authorized to expend any public funds for transportation of pupils that they must have their authority from the statutes.

CONCLUSION.

The only authority that we are able to find authorizing the school board to close an elementary school is when the average daily attendance of such school for a period of a month falls below ten. When the board closes the school under such circumstances, then the school will

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remain closed for the remainder of the term and the board is then authorized to transport the children to some other elementary school or schools in the district.

Respectfully submitted

TYNE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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