

SCHOOLS: Free transportation of pupils in a consolidated School District may be determined - 1. When Board deems it advisable. 2. When approved, at election, by 2/3 voters who are taxpayers. Board's discretion in formulating needful rules will prevail in either case. Non-resident pupils may be admitted to District and may be transported same as pupils within District.

November 1, 1943

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



Dear Mr. Slankard:

This is to acknowledge receipt of your letter of October 23 in which you request an opinion of this department. Your letter is as follows:

"I will appreciate very much your opinion on the following:

"The Board of Directors of a consolidated district have refused to route a school bus nearer than a mile from some of the pupils. Is the Board required under the law to furnish transportation within any certain distance of the pupils' homes? These pupils are residents of the district and while the Board has refused to come nearer than a mile to their home, at the same time it sends the school busses outside the district to pick up non-resident pupils."

In making provisions for the free transportation of pupils within the state, the obvious intent of the legislature was to make it possible for all the children within the state to have an education. In order to encourage attendance upon schools, particularly rural schools, the legislature has passed numerous sections of our statutes which are devoted exclusively to the matter of transportation. In so doing, the lawmakers have sought to anticipate every situation with which the pupils, parents, patrons and School Board might be confronted when they attempt to make schools more accessible to the pupils.

While the number of statutes so designated is relatively small, the questions raised are innumerable. These statutes are most generally misunderstood and are fruitful sources of misunderstanding and controversy. It would seem from the questions raised in your opinion request that the following Sections will apply: Section 10326, 10496, 10327, and 10340. We shall try to dispose of them in the order named.

The first of these Sections involving free transportation of pupils, Section 10326, R. S. Mo. 1939, reads as follows:

"Free transportation of pupils--how obtained--by whom paid.--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 10361. 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: Provided, that this section shall include pupils attend-  
private schools of elementary and high school  
grade except such schools as are operated for  
profit."

As we read this portion of our statutes, the transportation of pupils living more than  $\frac{1}{2}$  mile from school, at the expense of the district, may be made possible in either of two ways: (1) when the board deems transportation advisable; and (2) when requested by petition by ten or more taxpayers and subsequently voted on at either a regular or special election and approved by  $\frac{2}{3}$  of the voters, who are taxpayers. Then in either case the board shall arrange for transportation. They have the authority to make all needful rules and regulations for free transportation. The board is given considerable latitude at this point and it would appear that in the exercise of their discretion they may do so without interference.

Our statutes at Section 10326, R. S. Mo. 1939, state, you will note, with respect to the distance the children are to be transported to school, "All children living more than  $\frac{1}{2}$  mile may in the discretion of the board be transported." By implication we might gather that those living closer than  $\frac{1}{2}$  mile should walk. However, we point out what the legislature has said, and we presume they meant just what appears printed in the section.

When the situation involves a consolidated district, this section further states that the board is not required to maintain a school within  $3\frac{1}{2}$  miles of the pupils' home. Where transportation is made available the distance from home to school may exceed  $3\frac{1}{2}$  miles. The location of a school site in a consolidated district is within the discretion of the School Board. Whitehead v. Wenom, 32 S.W. (2d) 59, 326 Mo. 352.

Since your inquiry does not concern itself with matters of procedure in voting on the transportation question within the district or State aid where a transportation system has been inaugurated, we do no more than cite two sections for your consideration. Because of their extreme length we do no more than bring them to your attention. They are as follows:

Section 10496, R. S. 1939 - Transportation may be voted on.  
Section 10327, R. S. 1939 - State aid available.

At this point we direct your attention to a portion of a decision in State ex rel. Gastineau v. Smith, 196 S. W. 115:

" \* \* \* \* \* On reading the act of the Legislature it is clear that, if a vote is taken - and one was taken in this instance - to transport children who live farther than  $2\frac{1}{2}$  miles from a schoolhouse in the district, the transportation must include all children within the district falling within the class, and does not contemplate that the directors may use the incidental funds of the entire district to transport certain children in the district living more than  $2\frac{1}{2}$  miles from a schoolhouse and not transport other children in the district living more than  $2\frac{1}{2}$  miles from a schoolhouse. In other words, the act does not contemplate that a majority of the voters in the district or the school directors will be permitted to discriminate against certain children or certain parts of the district. The whole district is taxed to create an incidental fund, and if used at all for transportation it must be used without partiality or discrimination. As above stated, the school directors were transporting certain children out of the incidental fund under authority of a vote which was taken and the transportation of children was adopted in the district. It thereupon became the duty of the directors to transport all the children in the district falling without the  $2\frac{1}{2}$  mile line irrespective of their particular location \* \* \* \* \*."

See also a portion of the opinion as given in State ex rel. Jungmeyer v. Hunter, 200 S.W. 300, par. 2:

"Under Laws 1913, pp. 721, 723, Sec. 4, providing that if transportation is not provided for in any consolidated school district, it shall be the duty of the board of directors to maintain an elementary school 'within two and one-half miles by the nearest traveled road of the home of every child of school age within said school district,' where relator's children, after passing through the fields adjoining their home, as they had to to reach the highway, were less than  $2\frac{1}{2}$  miles from school, the act was complied with, it not requiring that the schoolhouse be within  $2\frac{1}{2}$

miles of the child's home, but only that it shall not be more than that distance from the point where access to the road is had."

Turning now to the admission of non-residents to a school we find in that portion of Section 10340, Mo. R. S. 1939, useful for our purpose this language:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district \* \* \* \* \* and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same, except as provided for in Section 10458, R. S. 1939 \* \* \* \* \*."

#### CONCLUSION

From our reading of the statutes as they apply to the free transportation of pupils and the decisions of the courts as they appear, we therefore conclude as follows:

That free transportation of pupils in a consolidated district more than  $\frac{1}{2}$  mile from school may be inaugurated: (1) when the board deems it advisable; and (2) when approved by  $\frac{2}{3}$  of voters in the district, who are taxpayers, at a regular or special election for that purpose.

That the board of the consolidated district shall arrange transportation and make all needful rules and regulations governing same. In so doing the board is given considerable latitude and unless there is a gross abuse of this discretion, their judgment in this situation must prevail. And further, the board may admit pupils not residents in the district, and they may prescribe the tuition fee to be paid by such non-residents.

Respectfully submitted,

L. I. MORRIS  
Assistant Attorney General

APPROVED:

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