

SCHOOLS: Private individual contracting with school district for transportation of public school children in privately owned bus may also contract with parents of individual children or any other person or with a private school for transportation of such children to a private school.

SCHOOL DISTRICTS:



August 27, 1953

*Mimeo  
copies*

Honorable F. E. Robinson  
Member, House of Representatives  
Jefferson City, Missouri

Dear Mr. Robinson:

This is in response to your request for opinion dated August 13, 1953, which reads, in part, as follows:

"The people of my county are very much disturbed, since the recent interpretation of the school bus law as it affects the parochial school students.

"I am asking your office, at this time, for an opinion on the following:

"If the school bus is owned by an individual, can this private bus pick up private as well as public school students, transport them and collect pay? State funds?"

The recent interpretation referred to in your request must be the cases of *McVey et al v. Hawkins et al*, 258 S.W. (2d) 927, and *Berghorn et al. v. Reorganized School Dist. No. 8, Franklin County, Missouri, et al.*, not yet reported.

The *McVey* case, on the facts therein, held unconstitutional the provisos at the end of Sections 165.140 and 165.143, RSMo 1949, primarily on the ground that under the Constitution of Missouri, 1945, Section 5, Article IX, the public school fund cannot be used for any purpose other than the establishment and maintenance of free public schools.

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The Berghorn case, among other things, condemned and held unlawful the intermingling of the funds of a school district with those of a church for the joint operation of a school bus.

In a previous opinion rendered to Honorable William L. Hungate, Prosecuting Attorney of Lincoln County, under date of August 27, 1953, this office has ruled that a school district has no statutory authority to provide transportation for children to private schools even though the pro rata cost of transportation is paid by the private school child so transported.

No question has been raised as to the power of a school district to contract with a private individual for the transportation of children to public schools, and we raise none now. The only question is whether the private individual who owns a school bus and contracts with the school district for the transportation of public school children in a privately owned bus may also contract with the parents of individual children or any other person or with a private school for transportation of such children to the private school.

Here we have no question of the use of public funds for transporting children to private schools; there is no question of an intermingling of public funds with those of a religious institution; nor is the school district making any provision for the transportation of private school children. The only action with regard to the transportation of the private school children is that of the private individual who owns the bus. The only funds used to compensate that individual therefor are private funds and not public. Therefore, on this basis we are unable to see on what theory the propriety of this action could logically be questioned.

As long as the owner of the bus fulfills his contract with the public school district to transport its pupils in the manner provided by the contract, and as long as there exists no basis for contention that public funds are being used for transportation of children to private schools, or that there is an unlawful intermingling of funds, it is our conclusion that a private individual who contracts with a school district for the transportation of public school children in a privately owned bus and receives pay therefor from public funds of the district may also contract with the parents of individual children or any other person or with a private school for transportation of such children to a private school, transport such children in the same bus used in transporting the public school children and receive pay therefor from such private individuals or private school.

#### CONCLUSION

It is the opinion of this office that a private individual who contracts with a school district for the transportation of

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public school children in a privately owned bus and receives pay therefor from public funds of the district may also contract with the parents of individual children or any other person or with a private school for transportation of such children to a private school, transport such children in the same bus used in transporting the public school children and receive pay therefor from such private individuals or private school.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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