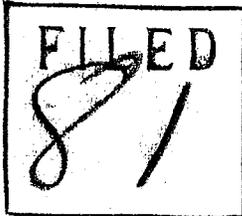


SCHOOLS: Children may not be transported to
SCHOOL FUNDS: private schools at the expense of
SCHOOL BUS TRANSPORTATION: the public school district.



June 14, 1954

Honorable D. W. Sherman, Jr.
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Mr. Sherman:

This is in response to your request for opinion of recent date, which reads, in part, as follows:

"On previous occasions I have been requested by the Higginsville Consolidated School District of Lafayette County, Missouri, together with the parochial Lutheran school in Higginsville, Missouri, to answer the following question that has been debated and that both will be concerned with within the next few months. The question I should like your opinion on is as follows, to-wit; 'May a private bus owner enter into a contract with a public school board for the transportation of public rural school students, and the same said private bus owner contract with the parents and/or board of parochial school, for the transportation of parochial students, charging different rates for the parochial students as he charges for the public students, or must the rates be the same?'

"Would the answer to the above question be the same if the contract carrier was a member of the public school board?"

Since the rendition of the decision in the case of McVey v. Hawkins, 258 S.W. (2d) 927, this office has been called upon to render several opinions on questions and problems that have arisen thereunder. Among these opinions was one directed to Honorable F. E. Robinson under date of August 27, 1953, a copy of which we enclose.

Honorable D. W. Sherman, Jr.

You will note that the Robinson opinion holds 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 the 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 individuals or private school. Your instant request raises the further question as to whether under a situation such as this the private bus owner must charge the same amount for transporting the private school children as he charges for transporting the public school children under his contract with the school board.

This problem arises out of the holding in the McVey case, supra, wherein the court concluded as follows:

" * * * We must and do hold that the public school funds used to transport the pupils part way to and from the St. Dennis Catholic School at Benton are not used for the purpose of maintaining free public schools and that such use of said funds is unlawful. It necessarily follows that such transportation of said students at the expense of the district is unlawful and must be enjoined. We express no opinion on any issues not directly decided herein."

It is apparent then that the essence of the court's decision is that children cannot be transported to private schools at the expense of the public school district.

In answering the problem presented by your request the only extent to which either we or the school board should be concerned about what the private bus owner charges for hauling either the public school children or the private school children is insofar as it bears on the basic question of whether in fact private school children are being transported at the expense of the district.

It can be readily seen that no rule applicable to all situations can be laid down whereby it can be determined under any given set of facts just how much the private bus owner must charge for hauling the private school children. The yardstick and guiding principle to be applied in each case is and must be: Are the

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private school children in fact being transported at the expense of the district? If they are not, then the amount that the private bus owner receives from private individuals for transporting the private school children is immaterial. On the other hand, if any amount of the expense of transporting the private school children is in fact being defrayed by the district, then such expenditure is unlawful and the board of directors may be subjected to individual liability for the amount thus unlawfully expended (State to Use of Consol. School Dist. No. 42 of Scott County v. Powell, 359 Mo. 321, 221 S.W. (2d) 508).

Therefore, it is impossible to answer your first question in general terms because the inquiry by the board should be not how much the bus owner should charge the private individuals for transportation of children to private schools but, rather, how much it should pay for the transportation of public school children. If the board does in fact pay only for transportation of public school children, then it is of no concern to the board how much the private bus owner charges for transporting private school children.

In answer to your second question we are enclosing a copy of an opinion rendered to Honorable Fred C. Bollow under date of June 30, 1948. This opinion holds that a member of a school board cannot contract in his private capacity with the board of which he is a member.

CONCLUSION

It is the opinion of this office that the mere fact that a private bus owner charges a rate for transporting children to private schools which is different from that which he charges the public school district for transporting children to public schools does not in and of itself render such arrangement illegal, but that such arrangement would be illegal only if the facts showed that in some way public school money was being used to pay for the transportation of private school students.

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

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml
Encs (2): Opn. F. E. Robinson, 8-27-53;
Opn. Fred C. Bollow, 6-30-48.