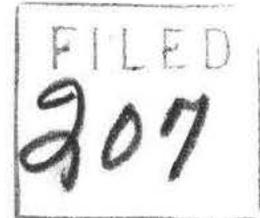


SCHOOLS: School boards have the authority to employ
SCHOOL DISTRICTS: personnel for the purpose of providing for
SCHOOL BOARDS: the safety and discipline of pupils while on
streets proximate to the school premises during
times proximate to school activities.

OPINION NO. 207

October 5, 1965

Honorable James Godfrey
State Representative
418 Olive Street
St. Louis, Missouri



Dear Representative Godfrey:

This official opinion is issued in response to your request for a ruling. You inquire:

"Whether or not it is legal for a school district to use money from the incidental fund to compensate guards for escorting and assisting school children to cross streets and highways while going to and from school."

It is a time-honored legal principle that school boards are creatures of statute and accordingly have only such powers as are expressly conferred by law or as are necessarily implied from the express powers. Wright v. Board of Education, Mo., 246 S.W. 43, 45.

Where a school board has a delegable power it is necessarily implicit in the power that the board may employ personnel essential to the implementing of the power. For example: Where a board has authority to provide transportation, it has authority to employ bus drivers; a board has authority to provide lunches, thus it has authority to employ cafeteria personnel; the board is charged with the control and preservation of school buildings, thus it may employ custodians.

Thus, whether or not a school board has the power to employ personnel to provide for the safety and discipline of pupils while crossing streets en route to and from school, depends upon whether or not the school board has the authority to control or govern pupils at such times and places.

Honorable James E. Godfrey

By statute, school boards are empowered to "make all needful rules and regulations for the organization, grading and government in the school district." Section 171.011, RSMo. Supp. 1963 Appendix.

This power has been frequently construed by the courts as extending beyond school premises and school hours. 79 C.J.S., Schools and School Districts, Section 496; 47 Am.Jur., Schools, Sections 172, 173, 186; Anno. 41 A.L.R. 1312.

School authorities, are considered loco parentis while pupils are within their domain.

" * * * The teacher of a school as to the children of his school, while under his care, occupies for the time being the position of parent or guardian, and it is his right and duty not only to enforce discipline to preserve order and to teach, but also to look after the morals, the health and the safety of his pupils; to do and require his pupils to do whatever is reasonably necessary to preserve and conserve all these interests, when not in conflict with the primary purposes of the school or opposed to law or a rule of the school board. . . ." (l.c. 230.)

" * * * the jurisdiction of the school board to make needful rules for the conduct of the pupils and of the teacher to enforce such rules, is not confined to the school room and school premises, but extends over the pupil on his road from his home to school and return. . . ." State ex rel. v. Randall, 79 Mo.App. 226, l.c. 229.

In Deskins v. Gose, 85 Mo. 485, a school rule forbidding quarreling or use of profane language at and on the way to and from school was in issue. The violation occurred about one-half mile from the schoolhouse. The court upheld the rule, saying, l.c. 488:

" * * * If the effect of acts done out of the school room while the pupils are returning to their homes, and before parental control is resumed, reach within the school room, and are detrimental to good order and the best interests of the school, no good reason is perceived why such acts may not be forbidden, and punishment inflicted on those who commit them. . . ."

Honorable James E. Godfrey -

Of course, the power of the school board ceases once parental control is resumed. E.G., Dritt v. Snodgrass, 66 Mo. 286; Wright v. Board of Education, supra. The exact line of demarcation where school authority ends must of course depend upon the circumstance of each case.

In Jones et ux. v. Cody, Mich., 92 N.W. 495, a rule requiring pupils to go directly home from school was challenged. The school principal personally enforced the rule upon the streets and in stores adjacent to the school grounds. The court made this pertinent statement which we consider worthy of full quotation, l.c. 496:

" * * * The rule and the method of enforcing it are reasonable, unless it be the law that those in control of our public schools have no jurisdiction over pupils outside the schoolhouse yard. It is not only the legal right, but the moral duty, of the school authorities, to require children to go directly from school to their homes. All parents who have a proper regard for the welfare of their children desire it. The state makes it compulsory upon parents to send their children to school, and punishes them for failure to do so. The least that the state can in reason do is to throw every safeguard possible around the children who in obedience to the law are attending school. The dangers to which children are exposed upon the streets of cities are matters of common knowledge. Humanity and the welfare of the country demand that a most watchful safeguard should, so far as possible, accompany children, when required or allowed to be on the streets. Parents have a right to understand that their children will be promptly sent home after school, and to believe that something untoward has happened when they do not return in time. In no other way can parents and teachers act in harmony to protect children from bad influences, bad companionship, and bad morals. . . ."

The opinion quoted supra was written in 1902. We think the hazards to the safety and welfare of pupils en route to and from school are no less today.

Obviously, in this mobile age, school discipline and government cannot be bound within the walls of a classroom or the metes and bounds of the schoolyard. School-owned buses transport pupils

Honorable James E. Godfrey

from all corners of the school district. The classroom is no longer a cubicle, but may be a distant museum, concert hall, historical site, or natural woodlands and fields. In all such instances the school board has the care and control of the pupils and may provide rules for their government.

As a result of their express authority to govern school affairs, we are of the opinion that school boards have the power to employ necessary personnel to provide for the discipline, safety and welfare of pupils where the activity is directly and immediately connected with the school. Normally, the teachers would be sufficient personnel to implement discipline.

However, circumstances may require and justify additional personnel as teachers-aids or attendants.

As to the particular question here, i.e., employment of street crossing attendants: From the above cited authorities, it is clear that school boards are empowered to discipline and control pupils within the adjacent environs of the school premises and within times proximate to school activities. We are of the opinion that school boards have the power to employ attendants to provide for the safety and discipline of school children while traveling to and from school upon streets proximate to the school premises.

We note that school authorities have frequently used older student patrols or proctors for this purpose. We see no distinction between the exercise of authority through students and the exercise through employees.

In urban areas municipal authorities who are charged with providing for the safety of the citizenry in general oftentimes provide street crossing attendants along school routes. However, we do not think this overlapping of jurisdiction derogates the school boards authority over students en route to or from school. Also, not every schoolhouse is located within an urban municipal corporation.

CONCLUSION

Therefore, it is the opinion of this office that school boards have the authority to employ personnel for the purpose of providing for the safety and discipline of pupils while on streets proximate to the school premises during times proximate to school activities.

The foregoing opinion which I hereby approve was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,


NORMAN H. ANDERSON
Attorney General