

SCHOOLS:
STATE AID:
SCHOOL TRANSPORTATION:

If a school board reasonably concludes that a student resides more than one mile from school via the shortest reasonably suitable route for pedestrian traffic and, furthermore, decides to provide public transportation for that student, the school district is entitled to state aid for the transportation of that pupil computed in accordance with Section 163.161, Senate Bills No. 1, 185 and 215, 75th General Assembly.

OPINION NO. 400

November 11, 1969

Honorable Joseph H. Frappier
State Representative, 24th District
2335 Hummingbird Drive
Florissant, Missouri 63033



Dear Representative Frappier:

This letter is in response to your request for an opinion on a question pertaining to the conclusion reached by this office in Section II of its Opinion 21 to Commissioner Hubert Wheeler, Commissioner, Department of Education, dated March 18, 1969. Specifically, your question was as follows:

"Please consider the following set of circumstances:

"I. A student resides less than one mile from school via the most direct public route.

"II. The school board determines that the most direct route is hazardous and not reasonably suitable for pedestrian traffic.

"III. The alternate route to school is reasonably suitable for pedestrian traffic but is more than one mile from home to school.

"IV. The school board decides to provide transportation to the children.

"Should the State Department of Education participate in the expense of transporting these children on the basis that the shortest route, considered by the Board to be reasonably suitable for pedestrian traffic, is in excess of one mile from the home to the school?"

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We assume your question is whether the school district should receive state aid for a pupil furnished public transportation pursuant to the circumstances set forth in your letter.

Section 163.161, as amended in 1969 (see Senate Bills Nos. 1, 185 and 215), provides the basis for furnishing state aid in transporting public school pupils and the method of computing it.

"1. Any school district which makes provision for transporting pupils as provided in sections 167.231 and 167.241, RSMo, shall receive state aid for the ensuing year for such transportation on the basis of the number of public school pupils transported per mile traveled as follows:

Pupils transported per mile traveled	Allowance per pupil per month
0 to 2.9	\$8.00
3.0 to 3.9	5.00
4.0 or more	4.00

The number of pupils transported per mile traveled is determined by dividing the average daily number of pupils transported one mile or more by the total miles of approved bus routes. The amount of state aid is determined by multiplying the allowance per pupil per month by the average daily number of pupils transported and multiplying the sum thus derived by the number of months the pupils are transported. Both resident and nonresident pupils shall be counted alike in determining the pupils transported per mile traveled. In no event shall such state aid per pupils exceed actual cost per pupil.

"2. The state board of education shall approve all bus routes and determine the total miles each district should have for the effective and economical transportation of the pupils."

An analysis of this section as it applies to your inquiry raises the following questions:

1. Did the school district in question make provision for transporting the pupil in question as provided in Section 167.231, RSMo Supp. 1967?

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2. If so, what is the meaning of "pupils transported per mile traveled" as the phrase is used in Section 163.161?

3. In view of the answers to questions 1 and 2, is the school district in question entitled to state aid for transporting the student who is the subject of your inquiry?

1. Presumably the School Board in Question Complied
With §167.231 in Providing Transportation

In Opinion 21 of this office dated March 18, 1969, a copy of which is enclosed herewith, we conclude that the determination of the shortest route which is suitable for normal pedestrian traffic is within the sound discretion of the local school board. For the purposes of this opinion, we assume that the school board in question reasonably concluded that the shortest reasonably suited route for pedestrian traffic was more than one mile from home to school. Based on (1) this assumption, (2) the fact as stated in your letter that this board subsequently decided to furnish the child transportation, and (3) the interpretation of Section 167.231, RSMo Supp. 1967, as set forth in Opinion 21, we conclude that provision has been made for transporting this pupil as provided in Section 167.231. Therefore, the condition precedent to any school district receiving any state aid for the transporting of any pupil has been satisfied.

2. Determining the Number of
"Pupils Transported per mile Traveled"

Section 163.161 provides that if a school district makes provision for transporting pupils as provided in Section 167.231, it ". . . shall receive state aid for the ensuing year for such transportation on the basis of the number of public school pupils transported per mile traveled . . ."

The method of determining the number of pupils transported per mile traveled is set forth in the following sentence of Section 163.-161:

" . . . The number of pupils transported per mile traveled is determined by dividing the average daily number of pupils transported one mile or more by the total miles of approved bus routes. . . ." (emphasis supplied)

The phrase "transported one mile or more" is susceptible of at least two interpretations. It could mean that if a pupil is actually on the bus for a distance greater than one mile he should be included in the computation. Another interpretation is that a pupil is transported one mile or more only if the distance from his home to school

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exceeds one mile. Implicit in the second interpretation is the question -- should this distance be measured by the shortest reasonably safe pedestrian route or by the shortest vehicular route from the home to school?

Contemporaneous and practical construction of ambiguous statutes over long periods of time by the officers charged with construction and administration thereof may be considered by the courts in construing them. Lemasters v. Willman, 281 S.W.2d 580 (St.L.Ct.App. 1955). We are advised by the State Department of Education that for a number of years it has measured this distance over the nearest traveled route from the home of the pupil in question to the school. For this opinion, we will adopt that construction. Therefore, the distance a pupil is transported for the purpose of computing the number of pupils transported per mile traveled in Section 163.161 should be measured over the nearest traveled route from the pupil's home to school were the bus to go directly between the two points.

3. The School District in Question is Entitled to Receive State Aid for the Pupil in Question

After determining the number of pupils transported per mile traveled, the amount of state aid under Section 163.161 is determined:

". . . by multiplying the allowance per pupil per month by the average daily number of pupils transported and multiplying the sum thus derived by the number of months the pupils are transported. . . ." (emphasis supplied)

Significantly, the phrase "one mile or more" does not follow "number of pupils transported." We believe "number of pupils transported" indicates the intention of the legislature to furnish state aid for each pupil transported in accordance with the requirements of Section 167.231. This conclusion is supported by the first part of Section 163.161:

"Any school district which makes provision for transporting pupils as provided in sections 167.231 and 167.241, RSMo, shall receive state aid for the ensuing year for such transportation . . ." (emphasis supplied)

Therefore, we conclude that "pupils transported" include all pupils for which transportation is provided pursuant to Section 167.231. We have already determined that the pupil in question is being transported pursuant to the requirements of Section 167.231. Consequently, this pupil should be counted as one of the "pupils transported" for the purpose of computing state aid for the school district.

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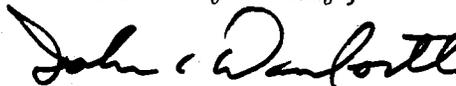
The amount of state aid for this school district would be determined by multiplying the allowance per pupil per month (determined in accordance with pages 3 and 4 of this opinion) by the average daily number of pupils transported pursuant to the requirements of Section 167.231 and multiplying the sum thus derived by the number of months the pupils are transported.

CONCLUSION

It is the opinion of this office that if a school board reasonably concludes that a student resides more than one mile from school via the shortest reasonably suitable route for pedestrian traffic and, furthermore, decides to provide public transportation for that student, the school district is entitled to state aid for the transportation of that pupil computed in accordance with Section 163.161, Senate Bills No. 1, 185 and 215, 75th General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 21
3-18-69, Wheeler