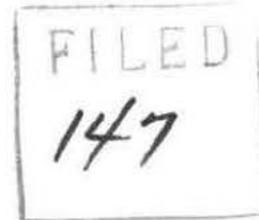


February 3, 1970

OPINION LETTER NO. 147
(Answered by Letter-Klaffenbach)

Honorable James Russell
Representative, 25th District
700 Bellarmine Lane
Florissant, Missouri 63031



Dear Representative Russell:

This letter is in response to your opinion request in which you ask whether or not a school board which furnishes transportation to and from school for pupils living over one mile from school is required to furnish such transportation to all such students or whether the board may refuse to furnish transportation to a kindergarten student who lives on a court located beyond the one-mile limit. You further advise that this student is the only one on the street that is beyond the one-mile distance and that the board does not think that it is feasible to furnish transportation for one child and pass up other children on the same street because they do not live over the mile limit.

Section 167.231, RSMo Supp. 1967, provides as follows:

"Within all school districts except metropolitan districts the school board shall provide transportation to and from school for all pupils living more than three and one-half miles from school and may provide transportation for all pupils living one mile or more from school. When the school board deems it advisable, or when requested by a petition signed by ten taxpayers in the district, to provide transportation to and from school at the expense of the district for pupils living more than one-half mile from the school, the board shall submit the question at an annual or biennial meeting or election or a special meeting or election called for the purpose. Notice of the meeting

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or election shall be given as provided in section 162.061, RSMo. If two-thirds of the voters, who are taxpayers, voting at the election or meeting, are in favor of providing the transportation the board shall arrange and provide therefor."

Section 167.231 of the Laws of 1963 provided:

"Within all school districts except metropolitan districts the school board shall provide transportation to and from school for all pupils living more than three and one-half miles from school and may provide transportation for all pupils living one mile or more from school whether in the original district, or in annexed territory."

In *State v. Smith*, 196 S.W.115 (1917), the Springfield Court of Appeals considered a situation where a school district was formed by consolidating several school districts and the children in one area were provided transportation, but not the children in the other areas. The Court stated that:

" * * * 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 1/2-mile line irrespective of their particular location."

In view of this holding by the Court, we are constrained to conclude that when, as here, the school board furnishes transportation to students located over one mile from the school, the board must furnish such transportation to all such students irrespective of their location and are not permitted to discriminate or show partiality.

In *State v. Tompkins*, 203 S.W.2d 881 (1947), the St. Louis Court of Appeals stated at 883:

"[4] When transportation in a school district has been voted it is the duty of the Board of Directors or Board of Education to provide for such transportation, providing money is available in the incidental fund of the district to meet the expense thereof, and if the Board,

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without reasonable cause therefor, fails to provide transportation, it may be compelled to do so by mandamus. However, this does not mean that the court may by the hard and unyielding writ of mandamus substitute its discretion for that of the Board as to the means and manner and sufficiency and safety of the transportation to be furnished. * * * "

We are also enclosing Opinion No. 21, dated March 18, 1969, to Mr. Hubert Wheeler, which is self-explanatory.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Encls:
Op.21-69-Wheeler