

SCHOOLS:  
SCHOOL BUSES:

1. A six-director school district may enter into an agreement whereby a school bus is acquired by monthly payments so long as the district's obligation thereunder does not exceed income available for the calendar year in which the debt is contracted. 2. The obligation of a school district to return the school bus under the circumstances set forth in the agreement in question would be a "lien" or "encumbrance" under Sections 301.190, 301.600 and 301.620, RSMo 1969, and should be noted on the certificate of ownership. 3. A six-director school district may agree to pay, in addition to monthly payments, insurance premiums for property damage and liability insurance covering the buses except that the district may not use public funds to purchase liability insurance covering its own negligence.

OPINION NO. 3

April 26, 1971



Honorable Harold J. Esser  
Representative, District 18  
Room 235 A, Capitol Building  
Kansas City, Missouri 64114

Dear Representative Esser:

This official opinion is issued in response to your request for a ruling on the following three questions:

"May a school district enter into an agreement whereby a school bus is acquired by monthly lease payments, which agreement does not obligate the district beyond one year, but gives the district the option to purchase the bus at a specified price at the end of the year or to renew the lease for another year, but there is no obligation on the district to exercise either option? This question assumes that the district has the money on hand to make the payments for the one year obligation, but not sufficient funds at inception of the lease to exercise the purchase option.

"May the school district legally take title to such bus subject to a lien in favor of the lessor or subject to an agreement to re-assign title to such bus if the option to purchase is not exercised?

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"May the district agree to provide property damage and liability insurance for such bus, naming the district and the lessor as insureds as their interest may appear?"

"This general subject is treated in Opinion No. 359 dated October 29, 1968, but the language of that opinion makes it difficult to tell if it applies to this situation. The Supreme Court case relied on in that opinion dealt with a contract which did obligate the City for more than one year, and for which funds were not on hand."

Question No. 1

The agreement in question is entitled "Lease Purchase Agreement." For the purposes of this opinion, we are not determining whether it is a lease or a conditional purchase agreement. Furthermore, we are accepting and relying on your statement that the agreement did not obligate the school district for more than one school year. We assume your conclusion in this regard is based on the following language in the agreement -- "the length of this lease shall be for a period of not less than the school year of 1968-1969, beginning September 1, 1968."

Article VI, Section 26(a) of the Missouri Constitution states as follows:

"Limitation on indebtedness of local governments without popular vote.--No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

This provision of the Missouri Constitution is self-enforcing and limits the power of a school district to become indebted in an amount exceeding its revenue for the calendar year. Hawkins v. Cox, 334 Mo. 640, 66 S.W.2d 539 (1933); Clarence Special School Dist. v. School Dist. No. 67, 341 Mo. 178, 107 S.W.2d 5, 7 (1937). If a school district incurs a debt as the result of a voluntary contract, the obligation is void if it exceeds the revenue actually provided for that year. Linn Consol. High School Dist. v. Pointer's Creek Public School Dist., 356 Mo. 798, 203 S.W.2d 721, 724 (1947). Section 26(a) does permit the anticipation of current revenues to the

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extent of the income in the year in which the debt is contracted but prohibits anticipation of the revenues of any future year. Ebert v. Jackson County, 70 S.W.2d 918, 920 (Mo. 1934).

Whether Section 26(a) has been violated is determined by the financial condition of the school district at the time a debt is contracted or created. Pullum v. Consolidated School Dist. No. 5, 357 Mo. 858, 211 S.W.2d 30, 34 (1948); Clarence Special School Dist. v. School Dist. No. 67, supra, at 6.

Applying the foregoing principles to the "Lease Purchase Agreement" in question, we have assumed that the school district's obligation thereunder was for one school year which included parts of two calendar years. Assuming that the agreement was entered into in 1968, it was void if the district's obligation under the contract exceeded the income available for calendar year 1968. See, for instance, Ebert v. Jackson County, supra. You state that the school district had on hand sufficient revenues in the year in which the obligation was created to make the payments under the contract. Therefore, we conclude that Section 26(a) of Article VI was not violated in calendar year 1968 because the school district did not have to rely on revenues from any future calendar year to make the payments under this contract even though the term of the contract was for part of two calendar years.

Having concluded that, under the applicable legal principles, the financial condition of the district in 1968 was such that Section 26(a) was not violated, we must now determine whether the board of education of a six-director school district is authorized to enter into an agreement of the kind referred to in your opinion request.

The government and control of a six-director school district is vested in a board of education. See Section 162.261, RSMo 1969. Section 167.231, RSMo 1969, authorizes the board of education to provide free transportation for pupils under certain circumstances. That section states as follows:

"Transportation of pupils within all except metropolitan districts.--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

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and from school at the expense of the district for pupils living more than one-half mile from 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 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."

There is no statutory direction to the board either in Section 167.231 or elsewhere setting forth the manner in which free transportation is to be provided. However, having been granted the authority to provide free transportation under certain circumstances, the power to enter into contracts to carry out this grant is implied. McClure Bros. v. School District, 79 Mo.App. 80, 86 (K.C.Ct.App. 1899). Furthermore, the means and manner of providing free transportation is up to the discretion of the school board. State ex rel. Rice v. Tompkins, 203 S.W.2d 881 (St.L.Ct.App. 1947). Therefore, we believe that entering into an agreement with a company which will provide buses to the district upon the payment of a monthly fee is a reasonable means of obtaining the buses necessary to provide the transportation services authorized by Section 167.231.

#### Question No. 2

Your second inquiry is whether the school district may legally take title to a bus subject either to a lien in favor of the "lessor" or subject to an agreement to reassign the title to the "seller" if the option to purchase is not exercised.

Section 301.010(21) defines "owner" for the purposes of the registration and licensing of motor vehicles in the State of Missouri as follows:

"'Owner', the term owner shall include any person, firm, corporation or association, who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this law;"

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The agreement that the school district proposes to enter into is, as previously pointed out, either a conditional sale or a lease with the right to purchase upon performance of certain conditions stated in the agreement and with the immediate right of possession vested in the school district. Therefore, for the purposes of the statutes governing motor vehicle registration and licensing we conclude that the school district would be an "owner" of the vehicle as that term is defined in Section 301.010(21).

The second paragraph of Section 301.260, RSMo 1969, provides as follows:

". . . and all other motor vehicles owned by municipalities, counties and other political subdivisions of the state shall be exempt from the provisions of sections 301.010 to 301.440 requiring registration, proof of ownership and display of number plates; . . . Provided, further, that when any motor vehicle is owned and operated exclusively by any school district and used solely for transportation of school children, the commissioner shall assign to each of such motor vehicles two plates bearing the words 'School Bus, State of Missouri, car no. . . . . ' (with the number inserted thereon), which plates shall be displayed on such motor vehicles when they are being used on the highways. . . ."

[Emphasis supplied]

If a school district is an "owner" of a motor vehicle for the purposes of the motor vehicle licensing and registration laws of Missouri, it is only reasonable to conclude that the school district "owns" that vehicle for the purposes of those laws. See Opinion No. 444, dated December 14, 1965, to Honorable J. R. Fritz (copy enclosed).

Therefore, pursuant to the quoted portions of Section 301.260 any school bus owned by a school district and operated exclusively for transportation of school children is (1) exempt from the provisions of Sections 301.010 to 301.440 requiring registration, proof of ownership and display of number plates and (2) shall be assigned two special license plates. We are advised by the Department of Revenue that, pursuant to Section 301.260, a certificate of ownership will be issued to any school district upon the payment of one dollar.

May the obligation of the school district to return the buses to the company be indicated on the certificate of ownership?

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Pursuant to paragraph 1 of Section 301.190, RSMo 1969, an application for certificate of ownership must include ". . . any liens or encumbrances on the motor vehicle. . . ." Paragraph 2 of that section states that the certificate of ownership shall contain, among other things, ". . . a statement of any liens or encumbrances which the application may show to be thereon." See, also, Sections 301.600 through 301.660, RSMo 1969. Although no definition of "lien" or "encumbrance" is set forth in Chapter 301, Section 301.620 requires that an "owner" of a motor vehicle show on his application for certificate of ownership, among other things, ". . . the name and address of the lienholder and the date of his security agreement, . . . ." A "security agreement" is defined in Section 400.9-105(1)(h), RSMo 1969, as ". . . an agreement which creates or provides for a security interest;". The definition of "security interest" is found in Section 400.1-201(37):

"'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 400.2-401) is limited in effect to a reservation of a 'security interest'. The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 400.2-401 is not a 'security interest', but a buyer may also acquire a 'security interest' by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a 'security interest' but a consignment is in any event subject to the provisions on consignment sales (section 400.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security; and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security."

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Regardless of whether the agreement between this district and the company is a conditional sale or lease agreement, the obligation of the district to return the buses to the company under certain circumstances was designed to secure "payment or performance" of the district's obligation. Therefore, we conclude that it would be a "lien," "encumbrance" or "security interest" and should be noted on the certificate of ownership. Sections 301.190, 301.600, and 301.620.

Question No. 3

Your third question involves the propriety of a school district agreeing to provide property damage and liability insurance for these buses naming the district and the "company" as insureds as their interest may appear.

The agreement in question provided that the school district should furnish certain described insurance.

"INSURANCE:

The leasee shall furnish insurance according to the following provisions.

(A) Loss payable clause to DIVCO-WAYNE Sales Financial Corporation. (B) The loss payable clause shall cover fire, theft, and collision in the amount of \$200.00 deductible. (C) The loss payable clause must provide a 10-day notice of cancellation to the lessor. (D) A minimum of \$100,000. public liability insurance naming the leasee, the lessor, and Divco-Wayne Sales Financial Corporation as the insured."

We assume for the purposes of this opinion that the school board could and did determine the cost of the required insurance coverage before executing the agreement.

Under these circumstances, we believe that the agreement may contain a provision that insurance premium payments are to be made by the school district in addition to a monthly payment. Pursuant to the agreement, the liability for damage to the buses rests with the school district. For the school district to insure its obligation in this regard would be within its power. Similarly, the school board could, as part of the consideration for this agreement, agree to pay the premium on a liability insurance policy naming the "lessor" as the insured. However, the board could not expend public funds to purchase liability insurance covering its own negligence for the reasons stated in Opinion No. 93, September 9, 1969, to Honorable William J. Cason (copy enclosed).

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CONCLUSION

Therefore, it is the conclusion of this office that:

1. A six-director school district may enter into an agreement whereby a school bus is acquired by monthly payments so long as the district's obligation thereunder does not exceed income available for the calendar year in which the debt is contracted.

2. The obligation of a school district to return the school bus under the circumstances set forth in the agreement in question would be a "lien" or "encumbrance" under Sections 301.190, 301.600 and 301.620, RSMo 1969, and should be noted on the certificate of ownership.

3. A six-director school district may agree to pay, in addition to monthly payments, insurance premiums for property damage and liability insurance covering the buses except that the district may not use public funds to purchase liability insurance covering its own negligence.

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

Yours very truly,



JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 444  
12-14-65, Fritz

Op. No. 93  
9-9-69, Cason