

Attorney General of Missouri

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May 17, 1979

OPINION LETTER NO. 112

Honorable Joseph Frappier
State Senator, District 2
Room 418, State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Frappier:

This is in response to your request for an opinion regarding the constitutionality of § 167.231(3), RSMo 1978, which provides:

"3. The board of education of any school district located wholly or primarily in a county of the first class not having a charter form of government and not containing any part of a city of over four hundred thousand population, may provide transportation to and from school for any public school pupil not otherwise eligible for transportation under the provisions of state law, if the parents or guardian of the pupil agree in writing to pay the actual cost of such transportation. The full actual cost shall be paid by the parent or guardian of the pupil and shall not be paid out of any state school aid funds or out of any fund of the school district. The cost of transportation may be paid in installments and the board of education shall establish the cost of the transportation and the time or times and method of payment."

Your concern is centered on the portion of the statute which authorizes the school district to charge a fee for transportation

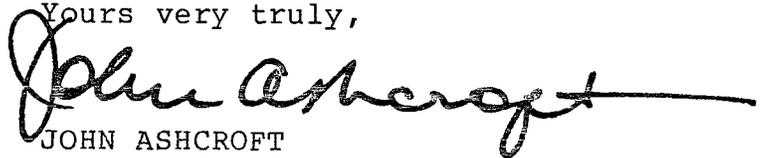
Honorable Joseph Frappier

service in light of Article IX, § 1(a), Missouri Constitution, which guarantees "gratuitous instruction" for all persons of school age.

We are enclosing a copy of Opinion No. 140 (1978) in which this same question was raised. In that opinion, this office declined to provide a ruling because of the Attorney General's duty to uphold the statute in the event its constitutionality were to be challenged. While this office has rendered several opinions in the past regarding the constitutionality of certain school fees, those questions arose in the context of school district practices, rather than statutes.

For these reasons, we must respectfully decline to rule on your question.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John Ashcroft", with a long horizontal flourish extending to the right.

JOHN ASHCROFT
Attorney General

Enclosure: Op. No. 140
Snowden, 9-6-78