CONSOLIDATED SCHOOL DISTRICTS: Transportation of pupils.

March 23, 1935 3-27

FILED 10

Honorable G.R. Breidenstein
Prosecuting Attorney
Clark County
Kahoka, Missouri

Dear Sir:

This Department is in receipt of your letter of March 11, requesting an opinion as to the following state of facts:

> "I would like to have the opinion of your department upon the following case.
>
> A consolidated school district votes for free transportation for all pupils living more than one-half mile from the school building, according to the provisions of Section 9197 R. S. Mo. The board of education establish transportation routes and serve said routes by busses. These routes as laid out by the board are more than one-half mile at their nearest point from the homes of some pupils.
>
> Can resident pupils of the district force the board to provide transportation for them from a point not more than one half mile from their respective homes? If the Board refuses upon demand being made to furnish transportation from some point not more than one-half mile from the homes of the pupils, and said pupils

furnish their own transportation, would the district or board be liable for the reasonable value and cost of such transportation furnished by said pupils?

I would appreciate very much having your opinion on this matter at an early date."

Section 9197 Revised Statutes Missouri 1929, provides as follows:

"Whenever the board of directors of any school district or board of education of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district, to provide for the free transportation to and from school, at the expense of the district, of pupils living more than one-half mile from the schoolhouse, for the whole or for part of the school year, said board of directors or board of education shall submit to the qualified voters of such school district, who are taxpayers in such district, at an annual meeting or a special meeting, called and held for that purpose, the question of providing such transportation for the pupils of such school district: Provided, that when a special meeting is called for this purpose, a due notice of such meeting shall be given as provided for in section 9228. If two-thirds of the voters, who are taxpayers, voting at such election, shall vote in favor of such transportation of pupils of said school district, the board of directors or board of education shall arrange for and provide such transportation. The board of directors or board of education shall have authority and are empowered to make all needful rules and regulations for the

> free transportations of pupils herein provided for, and are authorized to and shall require from every person, employed for that purpose, a reasonable bond for the faithful discharge of his duties, as prescribed by the board. Said board of directors or board of education shall pay by warrant the expenses of such transportation out of the incidental fund of the district."

The general rule respecting this question is found in 56 Corpus Juris at page 838, as follows:

> "Where the statute does not control the exercise with his discretion by a trustee in laying out a route, the fact that pupils must walk to meet the school bus on the established route, even though a child must cross a railroad track, or a frozen river to do it, is not a violation of the transportation statute in the absence of evidence that the trustee had abused his discretion."

In the case of Lyle v. State (Supreme Court of Indiana) 88 N. E. 850, the court had before it a statute similar to the one under consideration. In construing this statute the court said,

> "It is beyond belief from these and many other considerations that present themselves that the spirit of the statute requires the trustee to cause a conveyance to be driven to the home in the morning, and again in the evening, and take up and leave every child residing beyond the limited distances at his own doorstep, when many of the children might reduce the time en route twofold by the generally pleasurable and health-

giving exercise of a reasonable walk. Being a matter of administration, the whole subject must necessarily rest largely upon the sound discretion of the trustee reasonably exercised. The determination of questions arising in the establishing of such a route relate to school matters, and, if a patron is dissatisfied with any decision of the trustee with respect to the walking distance, or any other decision relating to the transportation of children, an appeal may doubtless be had to the county superintendent under the provisions of section 6667, Burns' Ann. St. 1908. State v. Black, 166 Ind.138, 76 N.E.882; State v. Schmetzer, 156 Ind. 528, 60 N. E. 269. As a public officer, it is the duty of the trustee to furnish the children of his township of school age with reasonable facilities for attendance upon the public schools. It is just as plainly his duty to subject his township to no unnecessary or unreasonable expense. If he can,by requiring the pupils to walk a reasonable distance to meet the conveyance,comfortably,safely,and timely transport all of the children of the district in one wagon or conveyance, he should not subject his township to the expense of two wagons in performing the same service. It can hardly be doubted that the mirthful play of well-clad children in the open in journeying over fences and fields,and along highways for short distances, is more hygienic and sanitary, and in the end better for the children, than to assemble and haul them in closed vehicles - sometimes too warm, sometimes too cold - for hours at a time in doubling the travel to the several homes. The health and protection of the children should in all cases be fundamentally considered. Their ages and sex,whether they must travel alone or in company, the character of the way, the facilities for

> rest and shelter while waiting for the conveyance in inclement weather, are all proper matters to be weighed in determining what is reasonable. It seems to us that it should not be difficult to make just and reasonable arrangements in all cases where there is a proper cooperation by the parents and trustee."

A similar construction was placed upon a statute of this nature by the Supreme Court of North Dakota, in the case of State v. Mostad 148 N. W. 841, wherein the court said:

> "There is, in our opinion, no material conflict in the evidence on the real issues in the case, and the only questions to be determined are whether the language of section 232, chapter 266, of the Laws of 1911, which provides for transportation 'to and from school,' is to be strictly construed, so that in all cases children must be actually conveyed from their house doors to the doors of the schoolhouse, or whether a reasonable discretion in such matters has been left with the school board; also, whether, if such discretion exists, there was an abuse thereof in the case at bar.
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> We are firmly of the opinion that the legislative intention was that actual transportation from the door of the home to the door of the schoolhouse should only be furnished as far as the same was reasonably practicable; in other words, that, though the statute is mandatory and cannot be avoided, it should be construed as if passed by reasonable men, and should be interpreted according to its spirit, rather than according to its letter."

The Supreme Court of Indiana, in the case of State ex rel. v. Miller 193 Ind. 492, affirmed the ruling in the Lyle case

and said:

> "The facts alleged in the complaint, together with any other pertinent facts, might properly be considered by the township trustee and the county superintendent in determining where the school wagon shall be driven. But so long as those officers are not shown to have abused the discretion vested in them by law the courts cannot interfere to control their action. Whether it was better for four small children to cross the railroad twice each day on foot, or for a school wagon with children in it to be driven across four times each day, was a question for the officers to decide in laying out a route for the school wagon. No error was committed in sustaining a demurrer to the complaint."

CONCLUSION

It will be noticed that Section 9197, supra, provides that the board of education shall have authority to make all needful rules and regulations for the free transportation of pupils. While it is a question of fact whether or not the board of education has abused its discretion in the instant case, it is our opinion that the intention of the legislature was that actual transportation from the door of the home to the door of the school house should only be furnished as far as reasonably practicable.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

JWH:LC