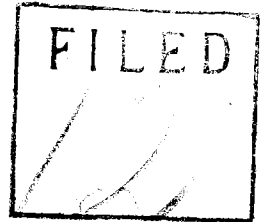


SCHOOLS: (1) In district having average daily attendance of less than 10, Board of Education has authority to provide for transportation of pupils to another district; (2) such closing of school and transportation of pupils to another district does not cause a forfeiture of the district's corporate existence.

December 30, 1938

Mr. R. R. Brock
Superintendent of Schools
Liberty, Missouri



Dear Mr. Brock:

This Department is in receipt of your letter of December 21st, wherein you request an opinion embracing the following questions:

"I would like to have your opinion upon the following school law.

A rural school district having an average daily attendance of approximately six students desires to close its school and transport its students into Liberty.

In order to do this, is it necessary for the voters to vote in favor of transportation, or can the Board of Education transport those pupils to a town school?

If the rural school closes its doors and transports its students, does the rural school lapse as corporate body, or can they re-open their rural school in the future?

Does the State pay on the transportation of those pupils?"

There are a number of sections in the Statutes dealing with transportation of pupils and the procedure relating thereto. The school in question being a rural district we think there are two sections which should be considered in arriving at our ultimate conclusion. What was formerly 9354 R. S. No. 1929, was amended in 1933, Laws 1933, page 388, so that the pertinent part of said section now reads as follows:

"The question of transportation of pupils may be voted upon at the special meeting

above provided for, if notice is given that such a vote will be taken. If transportation is not provided for in any school district formed under the provisions of sections 9351 to 9358, inclusive, it shall then be the duty of the board of directors to maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district: Provided, transportation of pupils or the maintenance of elementary schools within three miles and a half of each child of school age in the district shall not be required in consolidated districts now or hereafter organized under the provisions of sections 9351 to 9358, inclusive, where such consolidation has not placed said children further from an elementary school than they were prior to said consolidation: Provided however, no transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 18 of an act of the 56th General Assembly, found on Page 344, Laws of Missouri, 1931. Provided further, that when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district. Such transportation shall be paid for out of the incidental funds of the district: Provided further, that if transportation is not provided for, any consolidated district, may by a majority vote at any annual or special meeting, decide to have all the seventh and eighth grade work done at the central high school building, provided fifteen days' notice has been given that such vote will be taken. Such seventh and eighth grade work at the central high school may be discontinued at any time by a majority vote taken at any annual or special meeting.

We think that under the third proviso quoted supra, the authority is to be found as follows:

"That when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district. Such transportation shall be paid for out of the incidental funds of the district:"

By the terms of the above quoted section we are of the opinion that the Board of Education has authority to provide for the transportation of the pupils in the district which you mentioned in your letter.

In 1931 the Legislature passed Section 20, page 346, Laws of Missouri, 1931, which provides as follows:

"If any district in this state shall have an average daily attendance of less than 15 pupils as shown by the records of the last previous school year, the state superintendent shall, in lieu of such state aid, after investigation that convinces him that it would be to the best interests of all concerned, require the board to provide for the transportation of the pupils of such district to other public school or schools, provided that the total expense, including transportation and tuition paid by the state, shall not exceed the amount that the state would have otherwise paid to such district."

The above section is called to your attention for the reason that the State Superintendent might assist the district in the transportation of its pupils in the event that the district is entitled to or draws sufficient state aid. You will note that in the event the transportation is provided for by the board under Section 9354, R. S. Mo. 1929, same is to be paid from the incidental fund and likewise Section 20, quoted supra, provides the method for paying for the transportation.

Your attention is further called to Section 9197, R. S. Mo. 1929, which provides for either the board of directors or an election to be held to vote on the question of free transportation. Said section being 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 school-house, 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 transportation 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 above section, however, is eliminated from consideration of the question which you present for the reason that it contains the provision, "of pupils living more than one-half mile from the school house for the whole or part of the school year."

You further present the question as to whether or not in the event the school closes and transportation is provided for, the school loses its corporate existence. Section 9195 relates to a forfeiture of a school district and provides as follows:

"Whenever any school district of this state, now organized or that may be hereafter organized

under the laws of this state, shall fail or refuse, for the period of one year, to provide for an eight months' school in such year, provided a levy of forty cents on the one hundred dollars' valuation, together with the public funds and cash on hand, will enable them to have so long a term, the same shall be deemed to have lapsed as a corporate body, and the territory theretofore embraced within such lapsed district shall be deemed and taken as unorganized territory, and the same, or any portion thereof, may be attached to any adjoining district or districts for school purposes, in the same manner as is now provided in section 9273. Provided, that no school district shall be deemed to have lapsed where the failure to make the needed provision for the eight months of school results from the irregular or void proceedings had for that purpose: Provided, that in any district enumerating fewer than twenty-five children the board may, from year to year, arrange with the board or boards of other district or districts for the admission of all children of school age in said district containing fewer than twenty-five children enumerated, and, if desired, arrange for transporting children to and from school. And, when ratified by a two-thirds vote of the qualified voters of said school district, voting at a special meeting, such arrangements shall be final, and the board will be authorized to issue warrants upon the teachers' fund for payment of tuition, and upon the incidental fund for the payment of cost of transporting pupils."

The above quoted statute does not provide that in the event the school district closes and transports its pupils to another district shall cause a forfeiture of the corporate existence. We are of the opinion that the corporate existence of the school district remains in tact and continued regardless of the fact that the school is not used under the conditions which you have presented.

Respectfully submitted,

OWN:rw
APPROVED:

OLLIVER W. NOLAN
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney-General