

SCHOOLS  
TRANSPORTATION

School bus of Public school district may pick up school children in any rural districts thru which the bus route passes.

October 3, 1938

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Hon. Barker Davis  
Prosecuting Attorney  
Lewis County  
Canton, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"School bus, operated by a town school district . district which has high school, is routed thru two rural school districts adjoining for purpose of transporting high school pupils to such high school. Rural public schools are being maintained in such rural districts. Can such bus pick up and transport public school pupils, residing in such rural districts, to public school in town operating such bus, without consent of rural district, either free or for hire?"

Article XI, Section 1, of the Constitution of Missouri, provides as follows:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years."

The Supreme Court of Missouri in Wright v. Board of Education of St. Louis, 246 S. W. 43, 44 said:

"In view of the beneficent purpose of public education, it was not attempted in the Constitution (Article II) to place any restriction upon Legislative action in regard thereto other than an age limit

"within which the rights granted were to be enjoyed.

It is seen that the Constitution gives to the General Assembly the right to establish and maintain free public schools for persons in this state between the ages of six and twenty years. The General Assembly in carrying out the mandate of the Constitution has established free public schools. Laws have been enacted creating rural schools, consolidated schools, town and city schools, enlarged school districts, and other laws have been enacted so that no child between the ages of six and twenty years has to do without attending school at public expense. Where a pupil resides, in most instances, determines the place where such may attend school free. In other words, if a pupil resides in a city, such attends a city school without charge and if the place of residence is a rural district, then the rural school. However, a pupil residing in a rural district may attend school in a consolidated or city school district, but in order to do so must pay tuition. But if the pupil attends school in the district in which he resides then no tuition can be exacted from him. And if pupils reside in a district in which no school is maintained and provision is made to transport such to an adjoining district, no tuition fee or transportation fee is required, because education to them is free in such instances. Section 20, Laws of Mo., 1931, page 346. Like-wise, if a rural district does not maintain a high school such pupils may attend an approved high school in another district and the state and rural district pay the tuition fees. Laws of Mo., 1935, page 351. Section 18, Laws of Mo., 1933, page 388, permits the County Superintendent to assign pupils to a more assessable school and no tuition is required of the pupil.

Section 9207, R. S. Mo., 1929, reads in part as follows:

"The Board shall have power to make all needful rules and regulations for the organization, grading and government in their school district \* \* \* and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same \* \* \* provided further, that any person paying a school tax in any other district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax."

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Therefore, all school boards have the power to admit non-resident pupils and prescribe a tuition fee for their attendance. However, the right of the school district to admit non-resident pupils is purely discretionary and not mandatory. State ex rel Burnett v. School District of City of Jefferson, et al, 74 S. W. (2nd) 30. Also, the pupil is free to choose what school he desires to attend, if admittance can be had, in any school in the state. However, the pupils must attend school. Thus a student living in Canton, Missouri, could attend school in Canton free of charge, but could attend school in St. Louis, Missouri, if arrangements were made between him and the St. Louis school district. In other words, the right of the pupil to attend school in a district other than that of his residence is purely between the pupil and the district he seeks to attend school. The district in which he resides would have no voice in the matter if the pupil wants to attend a different school, as the district wherein he resides would not have to pay any tuition if he attended, under such circumstances, a different school. Like-wise, if a school which accepts non-resident pupils and exacts tuition fees from them desires to transport said pupils, we do not find any statute which requires the consent of the district of residence in order for such arrangement to be made. Therefore, whether the transporting is free or for hire does not enter into consideration. No consent of the rural district is required. And, if the transporting is pupils to a school, either free or for hire, such does not come under the Public Service Commission Act. As long as pupils are transported to and from school regardless of whether they reside in the district or not does not require the consent of the district, wherein the pupils reside, in our opinion, as it is a matter solely between the pupils and the school attended.

We answer your question - "Can such bus pick up and transport public school pupils, residing in such rural districts, to public school in town operating such bus, without consent of rural district, either free or for hire" - in the affirmative, in our opinion.

Yours very truly

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Acting Attorney General

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