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Date

Schools - Pupils  
Transportation



STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

September 13, 1974

Opinion No. 74- 316

Dr. C. Taylor Whittier,  
Commissioner of Education  
Kansas State Department of Education  
120 East 10th Street  
Topeka, Kansas 66612

Dear Commissioner Whittier:

You inquire concerning the amount which unified school districts are authorized to pay for transportation of students pursuant to K.S.A. 1973 Supp. 72-8304, which provides in pertinent part thus:

"In those cases where it is impracticable to reach a student's residence by the prescribed transportation route, and where such residence is more than one mile by road from the prescribed route; and in those cases where it is impracticable to schedule a school bus for the transportation of a student; the board of education may contract for the transportation of such student to the regular prescribed school route or to the school building. Such contracts shall provide for the payment of mileage at a rate not to exceed the rate specified in K.S.A. 1972 Supp. 75-3202 and any amendments thereto for each mile actually traveled;...."

Section 1 of ch. 385, L. 1974, amending K.S.A. 1973 Supp. 75-3203, states in pertinent part as follows:

"Whenever in the statutes of the state of Kansas any mileage is allowed to any public official of the state or any of the municipal subdivisions thereof, or to .... other persons, the rate thereof shall be in the amount fixed and established by the secretary of administration for each mile actually and necessarily traveled, .... and wherever in any statute a rate higher or lower than the amount so fixed per mile is now fixed, the same shall be reduced or increased to the amount fixed per mile as herein provided for ....  
*Provided*, The governing body of any county, city or school district may prescribe a rate lower than that provided in this section as to officers and employees of such county, city or school district ...."

Dr. C. Taylor Whittier  
September 13, 1974  
page two

The Secretary of Administration has fixed the mileage rate hereunder at 13 cents per mile.

The question you pose is whether a unified school district must pay mileage authorized under K.S.A. 72-8304 at the rate fixed by the Secretary, or whether a district may pay mileage thereunder at a lesser rate, one "not to exceed" the rate fixed by the Secretary under ch. 385, L. 1974.

K.S.A. 1973 Supp. 72-8304 clearly fixed the mileage rate authorized thereunder at a "rate not to exceed the rate specified in K.S.A. 1972 Supp. 75-3203 and any amendments thereto...." The only rate specified by the latter statute is that fixed by the Secretary of Administration. A unified school district may authorize payment of mileage under K.S.A. 72-8304, thus, at any rate it determines upon as just and proper, so long as the rate does not exceed 13 cents.

KS.A. 1973 Supp. 75-3203, as amended in 1974, does specifically authorize the governing body of a school district to prescribe a rate lower than that fixed by the Secretary of Administration for its "officers and employees...." The inference may be drawn by some, albeit erroneously, that this provision prohibits a board of education from fixing a lower mileage rate under any other statute when expressly authorized to do so. It does not. K.S.A. 72-8304 expressly authorizes the board to pay mileage at any rate it determines upon, so long as that rate does not exceed that fixed by the Secretary of Administration.

Very truly yours,



VERN MILLER  
Attorney General

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