



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 7, 1975

ATTORNEY GENERAL OPINION NO. 75- 420

Mr. Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
120 East 10th Street
Topeka, Kansas 66612

Re: Schools--County School Foundation Fund--Withholding
of Distribution

Synopsis: The provision of K.S.A. 72-8309 for the withholding of distribution from the county school foundation fund as a penalty for transportation of students in violation thereof has been effectively superseded, voided and repealed by provisions of the Kansas School District Equalization Act, K.S.A. 1974 Supp. 72-7030 *et seq.*

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Dear Commissioner Bolton:

You enclose a letter from Mr. Fred Mitchelson, attorney for Unified School District 246, dated September 23, 1975, reporting alleged violations by Unified School District No. 248, Girard, Kansas, of K.S.A. 72-8309. You also enclose a response to those allegations by Mr. John E. Shireman, superintendent of U.S.D. 248, denying those allegations. You request that we review this matter, and advise you of the appropriate course of action to be taken.

K.S.A. 72-8309 provides thus:

"It shall be unlawful for the board
of education of any school district to

furnish or provide transportation for students who reside in another school district, without the written consent of the board of education of the school district in which such student resides. A school district may transport a non-resident student, if such student boards the school bus within the boundaries or on the boundary of the transporting school district. Any school district violating the provisions of this section shall not be entitled to participate in the county school foundation fund."

The clear intent of this provision was to provide a means of penalizing those districts which transported students in violation of this section.

However, the operative effect of this penalty has been effectively voided by provisions of the Kansas School Equalization Act, K.S.A. 1974 Supp. 72-7030 *et seq.* K.S.A. 1974 Supp. 72-7043 states thus in pertinent part:

"In February of each year, the state board shall determine the amount of general state aid each district is entitled to receive for the current school year by subtracting the amount of the district's local effort from the district's legally adopted budget of operating expenses for the current year. The remainder is the amount of general state aid to which the district is entitled."

"Local effort" is defined by K.S.A. 1974 Supp. 72-7042(c) to include, as a component thereof,

"(3) an amount equal to the amount that the state board determines the district is entitled to receive from the fund established in K.S.A. 1973 Supp. 72-7074 [the county school foundation fund] based on the percentage of such fund that the district is entitled to receive from the levy made in the current school year for the fund."

Mr. Merle R. Bolton
Page Three
November 7, 1975

Thus, to the extent that the district's receipts from the county school foundation fund is reduced, the "local effort" is reduced *pro tanto*, and the amount of that reduction is automatically restored by the district's resultant increased entitlement under the School District Equalization Act, and specifically K.S.A. 1974 Supp. 72-7043.

Thus, the penalty provision of K.S.A. 72-8309 has been effectively superseded and voided by more recent legislation, specifically the provisions of the School District Equalization Act cited above. In these circumstances, there being no fiscal impact whatever upon the District resulting from any withholding of distribution from the county school foundation fund, it is my judgment that the penalties sought to be imposed by K.S.A. 72-8309 have been effectively repealed, and that you have no duties thereunder to withhold distribution from the county school foundation fund.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj