ATTORNEY GENERAL OPINION NO. 75-470

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Re: Schools--Transportation of Students--Privately Owned and Operated School Bus

Synopsis: The continued, gratuitous operation of a school bus by a private citizen or association does not violate the provisions of K.S.A. 72-8309 and thereby render the school district or its officials subject to criminal prosecution under K.S.A. 72-8314; however, such action does violate the restrictions imposed by K.S.A. 72-8313 on the operation of the school bus and potentially subjects the private individual or association to the imposition criminal sanctions under K.S.A. 72-8314, unless and until the vehicle is modified in accordance with K.S.A. 72-8313.

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Dear Mr. Spurney:

You have requested an opinion from this office concerning the legality of a group of private citizens operating a school bus to transport students to a unified school district different from the school district of their actual residence. You have stated that the vehicle in question carries all the traditional indices of a school bus including the markings, signal lamps, stop-arm and other features required by K.S.A. 8-1556 and 8-1730. The certificate of title is registered in
the name of two private citizens. The bus operates within
the boundaries of Unified School District #427 and transports
approximately 45 students to attendance facilities within
U.S.A. #426. Unified School District #427 has not consented
in writing to this transportation.

Under Article 83 of Chapter 72, entitled "Transportation of
Students", the term "school bus" is defined by K.S.A. 72-8301(e)
to mean:

"(1) Any public school bus owned by the
school district; or (2) any privately
owned motor vehicle under contract or
hire to a school district for trans-
portation of students or school
personnel."

In regards to the particular problem under consideration here,
K.S.A. 72-8309 provides:

"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 partici-
pate in the county school foundation fund."

The words "furnish or provide transportation" are defined by
K.S.A. 72-8301(c) to mean and include:

" ... the right of a school district to:
(1) Purchase, operate and maintain
public school buses; (2) contract, lease
or hire buses for the transportation of
students and school personnel; and (3) 
reimburse persons who furnish transpor-
tation to students or school personnel 
in privately owned motor vehicles."

Unless the school district in some manner "furnishes or 
provides transportation" within the scope of the above 
definitions, there has been no violation within the scope 
of K.S.A. 72-8314 for the criminal sanction may be imposed on 
the school district or its officials.

In reference to privately owned and operated school buses, 
K.S.A. 72-8313 states:

"Any individual, firm, partnership, 
association or corporation who purchases 
a motor vehicle, which was operated by the 
seller thereof as a school bus, as defined 
in K.S.A. 8-501, and any amendments thereto, 
is hereby required to repaint such vehicle 
a color other than yellow, disassemble 
and remove the "stop arm" therefrom and 
disconnect all flashing or rotating 
warning lights on such vehicle before 
it is operated on the public highways of 
this state for any purpose other than 
those set forth in the definitions of a 
school bus referred to herein."

The definition of a "school bus" contained in K.S.A. 8-501 was 
repealed at Chapter 33 of the 1974 Session Laws and re-enacted 
at K.S.A. 1974 Supp. 8-1461 under the new Uniform Act Regula-
This new definition provides:

"School bus" means every motor vehicle 
owned by a public or governmental agency 
and operated for the transportation of 
children to and from school, or to and 
from activities, as defined in K.S.A. 
72-133, or every motor vehicle privately 
owned and operated for compensation for 
such transportation of children."

The question then becomes simply whether a private individual 
or association, operating a school bus without any compensation
from the serviced school district, may continue to operate a recently purchased, used school bus without violating the requirements of K.S.A. 72-8313.

It is my opinion that the answer to this question must be answered in the negative. The definition contained in former K.S.A. 8-501, re-enacted as K.S.A. 1974 Supp. 8-1461, limits the term to those "... motor vehicles owned by a public or governmental agency and operated for the transportation of students" or "a motor vehicle privately owned and operated for compensation for such transportation ... ". K.S.A. 72-8313 requires the purchasers of vehicles formerly operated as a school bus to repaint such vehicle a color other than yellow, disassemble and remove the "stop arm" therefrom and disconnect all flashing or rotating warning lights, unless it is to be operated for those purposes specified in K.S.A. 1974 Supp. 8-1461. Since the gratuitous operation of a school bus by private citizens is not within the purview of either of those purposes, it must be concluded that the failure of the owners to comply with K.S.A. 72-8313 renders them subject to prosecution under K.S.A. 72-8314.

Accordingly, it is the opinion of this office that the continued, gratuitous operation of a school bus by a private citizen or association does not violate the provisions of K.S.A. 72-8309 and thereby render the school district or its officials subject to criminal prosecution under K.S.A. 72-8314; however, such action does violate the restrictions imposed by K.S.A. 72-8313 on the operation of the school bus and potentially subjects the private individual or association to the imposition criminal sanctions under K.S.A. 72-8314, unless and until the vehicle is modified in accordance with K.S.A. 72-8313.

Sincerely yours,

CURT T. SCHNEIDER
Attorney General