



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

December 29, 1975

ATTORNEY GENERAL OPINION NO. 75-470

Frank G. Spurney, Jr.
SPURNEY & SPURNEY
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910 M Street
Belleville, Kansas 66935

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.

* * *

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

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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 transportation 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 participate 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

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students and school personnel; and (3) reimburse persons who furnish transportation 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 Regulating Traffic on the Highway, K.S.A. 1974 Supp. 8-1401 et seq. 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

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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

CTS:HTW:bv