



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER  
ATTORNEY GENERAL

October 23, 1978

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78- 339

Ms. Jean Pauly  
Unified School District No. 356  
P. O. Box 218  
Conway Springs, Kansas 67031

Re: Schools--Religious--Buses

Synopsis: Any board of education may contract with the governing board of a "release time" church school for the church school's use of district-owned or leased school purposes pursuant to K.S.A. 72-8302(b)(2).

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Dear Ms. Pauly:

You inquire concerning whether the Weekday Church School sponsored by the Inter-Church Council of Conway Springs - Viola, Kansas, is a nonpublic school as described in K.S.A. 72-8302(b)(2).

"(b) Any board of education may, pursuant to a policy developed and adopted by it, provide for the use of district-owned or leased school buses when not in use for school purposes by contracting with . . . (2) the governing authority of any nonpublic school for transportation of pupils attending such nonpublic school to or from interschool or intraschool functions or activities, . . . ."

The Weekday Church School is described as a "release time" program, whereby unified school district students are allowed to

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attend, with parental consent, a bible school program one day a week during the school year. Such a program was determined to not be in violation of the First Amendment to the United States Constitution or of the Constitution of the State of Kansas, Bill of Rights, Section 7, by Attorney General Vern Miller in Opinion No. 73-242. That opinion relied upon a United States Supreme Court decision in Zorach v. Clauson, 343 U.S. 306, 96 L. Ed. 954, 72 S. Ct. 679 (1952). It was further determined in that opinion that "the time during which students are released from school for religious instruction may not be considered as in satisfaction of the hours of education required by K.S.A. 72-1106."

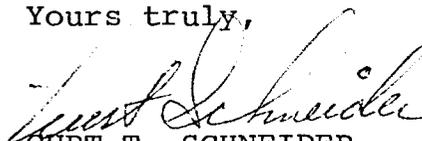
It is clear, judging from the information sheet you have enclosed, the governing structure of Weekday Church School is separated legally and in reality from that of the school board of Unified School District No. 354. Weekday Church School is a private religious instruction school. As noted above, pupil instruction received at that school may not be used to satisfy the hours required for instruction in the unified school district under K.S.A. 72-1106.

In view of this separation of public and private purpose and of organization and financial support, it is my opinion that the Weekday Church School is a nonpublic school as contemplated in K.S.A. 72-8302(b)(2).

As may be noted in K.S.A. 72-8302(b)(2), there is a statutory requirement that district owned or leased school buses may be used for such nonpublic school use only when they are not being used for public school purposes. In addition, the board of education when entering such a contract is required to maintain adequate liability insurance. It is within the sound discretion of the board of education to decide whether to enter into such a contract. There is no mandate that the board of education provide buses for these purposes. Adequate consideration received by the public school district must support any such contract.

In summary, it is my opinion that Weekday Church School is a nonpublic school and that Unified School District No. 354 may contract for the transportation of these type of students pursuant to K.S.A. 72-8302(b)(2).

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:SDT:jm