



STATE OF KANSAS

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December 16, 1981

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ATTORNEY GENERAL OPINION NO. 81- 278

Robert L. Bates
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Re: Schools -- Transportation of Students -- Privately-
Owned Vehicles; Contracts for Payment of Mileage

Synopsis: K.S.A. 72-8302(a) (as amended by L. 1981, ch. 294, §1) requires a school district to provide or furnish transportation for every student who resides in the district, who attends grades kindergarten through twelve, and who falls into one of three specified categories pertaining to the location of the student's residence and the location of the school attended. The district must schedule its school bus or motor vehicle routes so that each eligible student will receive transportation every school day. A limited exception to this duty is provided for those cases where it is impracticable to provide transportation by such means, either because of difficulty in reaching the student's residence or for scheduling reasons. (K.S.A. 72-8304.) While a district may contract with a student's parents for the transporting of the student in a privately-owned vehicle in such cases, such contracts cannot be made a substitute for the overriding duty of the district regarding transportation. Attorney General Opinion No. 79-311 is reaffirmed. Cited herein: K.S.A. 72-601 (repealed, L. 1947, ch. 359), 72-621 (repealed L. 1968, ch. 401), 72-8301, 72-8302 (as amended by L. 1981, ch. 294, §1), 72-8304, K.A.R. 1981 Supp. 1-18-1a.

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Dear Mr. Bates:

As attorney for Unified School District No. 428 (Great Bend), you request our opinion on a question concerning the transportation of students by the district. Specifically, you inquire whether K.S.A. 72-8301 et seq. require the district to establish a system of school buses to provide such transportation.

You inform us by way of explanation that at the present time school bus service is provided to only one portion of the district. This territory, known as the Bissell's Point area, was formerly a separate school district, and was merged with other, larger districts at the time of unification. You further inform us that while other districts in the unification plan, Great Bend School District No. 1 and Great Bend High School District No. 7, did not operate school bus systems, the Bissell Point district did. This pattern continued following unification, with bus service provided only in the latter portion of the new district. However, in June of this year the district board voted to discontinue even such limited service. On behalf of the board, you wish to know whether the district indeed has a duty to establish a system of bus transportation throughout the district, as some busing proponents are claiming.

We would initially note that the present act dealing with transportation of students by a district, K.S.A. 72-8301 et seq., has at least two earlier predecessors. The first, K.S.A. 72-601 et seq., was enacted in 1917 (at chapter 277 of the session laws for that year), and gave districts the clear option between operating bus systems or paying mileage to the parents of students living more than 3 miles from the schools they attended. K.S.A. 72-601. As long as a board was willing to make the required payment of 15 cents a day, it did not have to furnish transportation. Harkness v. Ness County School District No. 3, 103 Kan. 573 (1918). These statutes were repealed in 1947 by chapter 359 of the session laws, which chapter appeared as K.S.A. 72-614 et seq. Again, a district was given the option (by K.S.A. 72-621) of either providing transportation for all students who lived more than 2 1/2 miles from their school or paying mileage at the rate of 5 cents per mile. Kimminau v. Kingman County Common School District No. 1, 170 Kan. 124 (1950).

This act was replaced in turn by L. 1968, ch. 401, presently K.S.A. 72-8301 et seq. That the Legislature intended to change the policies of the previous statutes may be evinced from K.S.A. 72-8302. As amended by L. 1981, ch. 294, §1, subsection (a) of this statute states:

"(a) The board of education of any school district may provide or furnish transportation for pupils to or from any school of the school district. Every school district shall provide or furnish transportation for every pupil who resides in the school district and who attends any of grades kindergarten through twelve at a school of the school district subject to the conditions specified in provision (2) and to any one of the following conditions:

"(1) (A) The residence of the pupil is inside or outside the corporate limits of a city, the school building attended is outside the corporate limits of a city and the school building attended is more than 2 1/2 miles by the usually traveled road from the residence of the pupil, or

(B) the residence of the pupil is outside the corporate limits of a city, the school building attended is inside the corporate limits of a city and the school attended is more than 2 1/2 miles by the usually traveled road from the residence of the pupil, or

(C) the residence of the pupil is inside the corporate limits of one city, the school building attended is inside the corporate limits of a different city and the school building attended is more than 2 1/2 miles by the usually traveled road from the residence of the pupil.

(2) The pupil observes the rules and regulations adopted by the board of education to govern the conduct of all pupils while being transported in school buses, and also the rules and regulations relating to the control and discipline of pupils while they are being transported." (Emphasis added.)

Several points are worthy of mention from the above. First, it should be noted that the 2 1/2 mile requirement has been qualified by the additional considerations of paragraphs (A), (B) and (C). Without going into the situations where busing is required, it may also be noted that if both the student and the school he or she attends are within the same city,

no duty to provide transportation is imposed, which is a clear change from previous statutes. However, for the groups of students which are specified by the statute, the district has an affirmative duty to "provide or furnish transportation."

This latter phrase is defined at K.S.A. 72-8301(c) at some length:

"The words 'provide or furnish transportation' in addition to their ordinary meaning shall mean and include the right of a school district to: (1) Purchase, operate and maintain school buses and other motor vehicles; (2) contract, lease or hire school buses and other motor vehicles for the transportation of pupils, students and school personnel; (3) purchase, operate and maintain buses other than school buses for the transportation of pupils, students or school personnel to or from school-related functions or activities; (4) contract, lease or hire buses other than school buses for the transportation of pupils, students and school personnel if said buses are owned and operated by a public common carrier of passengers under a certificate of convenience and necessity granted by the state corporation commission or the interstate commerce commission and are operating within the authority granted to said public common carrier; and (5) reimburse persons who furnish transportation to pupils, students or school personnel in privately owned motor vehicles." (Emphasis added.)

It is evident from the above that a district is provided with a wide range of options in fulfilling its duty to supply transportation, and does not of necessity have to expend large capital outlays for a fleet of school buses or other motor vehicles, as these terms are defined by K.S.A. 72-8301 (g) and (e), respectively. Rather, the district may "contract, lease or hire" such vehicles, which may be either privately-owned and operated [K.S.A. 72-8301(g)(1)] or owned and operated by a public common carrier [K.S.A. 72-8301(c)(4)]. Additionally, a district may, if it desires, reimburse persons who use privately-owned motor vehicles to provide transportation. Under the "contracts" allowed by K.S.A. 72-8304, such reimbursement is in the form of mileage, as that figure is set by Kansas statute and rule and regulation. (At present, the rate is \$.22 per mile, as authorized by K.A.R. 1981 Supp. 1-18-1a.)

Were this the extent of the statutes, we would be of the opinion that the district still possessed the type of options available under the earlier statutes, i.e., either provide transportation or, in lieu of that, compensation for the use of privately-owned vehicles. However, as was noted in a previous opinion of this office, No. 79-311, the district's power to make agreements for private transportation is limited by K.S.A. 72-8304. Therein, it is stated:

"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 regularly 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. 75-3203 and any amendments thereto for each mile actually traveled; shall be limited to two round trips per day on a route prescribed by the board of education; and shall be subject to any rules or regulations adopted by the board of education. In those cases, where more than one student is transported in the same vehicle, mileage shall be paid for only one student." (Emphasis added.)

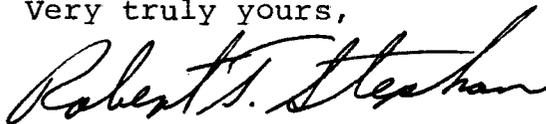
In Opinion No. 79-311, it was the opinion of this office that the ability of a district to pay mileage for private transportation is limited to those cases where it is impracticable to provide other forms of transportation, either because of difficulty in reaching the student's residence or for scheduling reasons. We reaffirm that conclusion here. Furthermore, it is our opinion that any result which allowed the district the option to pay mileage in lieu of providing direct transportation would render K.S.A. 72-8304 superfluous, a result which in construing statutes is to be avoided. American Fidelity Ins. Co. v. Employers Mutual Casualty Co., 3 Kan.App.2d 245 (1979). If, for example, K.S.A. 72-8302 allows a district to decide when to provide buses and when to make payments in lieu of bus service, there is no reason to provide the additional authority given by the first sentence of K.S.A. 72-8304. If possible, effect should be given to each and every part of a statute. Southeast Kansas Landowners Assn. v. Kansas Turnpike Authority, 224 Kan. 357 (1978).

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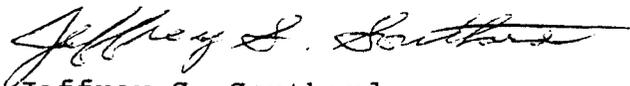
It is moreover our opinion that K.S.A. 72-8301(c)(5), in which the district is given the right to reimburse persons for the use of their private vehicles, must be read in pari materia with K.S.A. 72-8304. While the former statute establishes the right of the district to reimburse, it provides no method for how this is to be accomplished. This detail is supplied by the latter statute, which incorporates the mileage rates established by the Secretary of Administration. Nor can the district be found to possess the inherent power to set reimbursement rates of its own under K.S.A. 72-8301(c)(5). See, e.g., Carothers v. Florence Board of Education, 153 Kan. 126 (1941). Accordingly, the one statute may not be read without also making reference to the other, including the limiting provisions found therein.

In conclusion, K.S.A. 72-8302(a) (as amended by L. 1981, ch. 294, §1) requires a school district to provide or furnish transportation for every student who resides in the district, who attends grades kindergarten through twelve, and who falls into one of three specified categories pertaining to the location of the student's residence and the location of the school attended. The district must schedule its school bus or motor vehicle routes so that each eligible student will receive transportation every school day. A limited exception to this duty is provided for those cases where it is impracticable to provide transportation by such means, either because of difficulty in reaching the student's residence or for scheduling reasons. (K.S.A. 72-8304.) While a district may contract with a student's parents for the transporting of the student in a privately-owned vehicle in such cases, such contracts cannot be made a substitute for the overriding duty of the district regarding transportation. Attorney General Opinion No. 79-311 is reaffirmed.

Very truly yours,



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