



STATE OF KANSAS

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April 26, 1988

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ATTORNEY GENERAL OPINION NO. 88- 59

Mr. Daniel D. Metz
116 South Fourth
P.O. Box 36
Lincoln, Kansas 67455

Re: Schools -- Transportation of Students --
Transportation of Pupils; Required Under Certain
Conditions

Roads and Bridges; Roads -- County and Township
Roads; General Provisions -- Duties of County
Engineer; Repair of Roads

Synopsis: A school district is obligated to furnish or provide transportation to students who reside in the district, and who reside more than two and one-half miles from the schoolhouse, with some exceptions for those students who live and attend school in a city. The district's obligation is fulfilled when it provides bus transportation, reimburses persons who furnish transportation in privately owned vehicles, or utilizes a combination of both. A county has a duty to keep county roads in repair. Whether repairing a road necessarily involves graveling is a question of fact for the courts. While a family that lives on a county dirt road is obligated to require their children to attend school, that obligation does not encompass graveling the county dirt road. In the absence of a tax levy or establishment of a road benefit district, other adjoining property owners also do

not appear to have an obligation to involuntarily share in the repair expense which would be incurred should the county dirt road be graveled. Cited herein: K.S.A. 68-115, 68-502, 68-5,100, 68-701, 68-702, 72-1111, K.S.A. 1987 Supp. 72-1113, K.S.A. 72-8301, 72-8302, 72-8304.

* * *

Dear Mr. Metz:

As attorney for Unified School District No. 298, you have requested our opinion concerning the transportation of students. Specifically, you inquire about the respective duties of the school district, the county, the students' family, and adjoining property owners when transportation routes are impassible during wet conditions because the road is not maintained as an all-weather road.

Your first inquiry involves the duty of a school district to provide or furnish transportation to students. The transportation of students is governed by K.S.A. 72-8301 et seq. Whether providing transportation is discretionary or mandatory is determined by application of K.S.A. 72-8302. Subsection (a) merely states that a district is authorized to provide or furnish transportation. Subsection (b) lists three situations in which transportation must be provided or furnished. The phrase "provide or furnish transportation" is defined by K.S.A. 72-8301(c). That definition gives the district the right to fulfill its duty by any one of five means, including using its own buses or other motor vehicles; leasing vehicles; using its own buses other than school buses; contracting for buses owned and operated by a common carrier; or reimbursing persons who furnish transportation to pupils in privately owned vehicles. Pursuant to K.S.A. 72-8304, a school district is authorized to prescribe bus routes. If it is not practicable to reach a student's residence by the prescribed route, or if it is not practicable to schedule a school bus for the student's transportation, then the board of education may enter into a contract to pay mileage for the transportation of the student. K.S.A. 72-8304.

The provisions of K.S.A. 72-8301 et seq. were construed in State ex rel. Stephan v. U.S.D. 428, 231 Kan. 579 (1982). In that case, the court considered the legislative intent of the statutes, and construed by reading them in para

materia. It was held that a school district may fulfill its obligation by furnishing bus transportation over prescribed routes, by reimbursing persons who furnish transportation, or by furnishing bus transportation for some students and mileage reimbursement for others. 231 Kan. at 585. It therefore appears that the school district has no affirmative duty to provide bus transportation when the transportation route is impassable, but is statutorily required to reimburse for mileage those persons who provide transportation.

Your next inquiry involves the duty of a county to maintain the county road in such condition as will make it passable when it rains or snows. The county engineer is under a statutory duty to open all state and county roads, to keep them in repair, and to remove all obstructions found therein. K.S.A. 68-115. That section was cited in Gronniger v. Board of Doniphan County Comm'rs, 6 K.A.2d 642 (1981), which held that mandamus is proper to compel the county commissioners to perform the duty of maintaining the county roads along the true course of the road, to keep the same in repair, and to remove all obstacles that may be found therein. 6 K.A.2d at 645.

While the county has a duty to keep a county road in repair, the extent to which the road must be repaired is not defined. In Neosho County Commissioners v. Burdick, 120 Kan. 698 (1926), the court stated that "[w]hile a county is required to improve a county road, it is not required to surface it with gravel." Burdick, Syl. ¶ 1. While there are distinctions to be made between the facts in Burdick and the situation you describe, we find no reason established by case law or by statute which compels a particular standard of maintaining county roads other than that stated in Burdick. Rather, it appears that the degree of repair is discretionary with the county commissioners, and is to be based on the expertise of the county engineer exercised pursuant to K.S.A. 68-502.

In summary, the county has a duty to repair its roads. Failure to perform that duty may give rise to a mandamus action. It is a question of fact whether repairing a road requires graveling so that it may be used during inclement weather.

We now consider the obligations of the individual family in this matter. K.S.A. 72-1111(a) mandates that every parent


having charge of any child between the ages of 7 and 16 shall require such child to attend continuously a public school each school year or a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denomination or parochial school is located. This compulsory education requirement does not, however, appear to require that the individual family absorb the necessary repair expenses which would be incurred if the county road was to be graveled. With regard to any absences from school by the family's children, which may occur as a result of the condition of the county road in question, it is the responsibility of the school district to adopt rules for the determination of valid excuses for absences from school. K.S.A. 1987 Supp. 72-1113(c). The district board members could consider this set of circumstances in the exercise of its discretion in determining what will be a valid excuse.

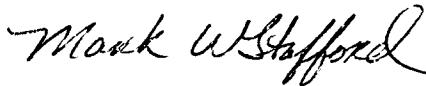
Regarding the obligation of owners of adjoining property to contribute to the maintenance of the county road, it appears that a duty might arise in one of two ways. The obligation may arise pursuant to a tax levy authorized by K.S.A. 68-5,100. In that situation, the tax would be levied throughout the county, and the burden would be on taxpayers county-wide. In the alternative, the cost of repair may be apportioned in compliance with K.S.A. 68-702 when a road benefit district is established pursuant to K.S.A. 68-701 et seq.

In conclusion, it is our opinion that a school district is obligated to furnish or provide transportation to students who reside in the district, and who reside more than two and one-half miles from the schoolhouse, with some exceptions for those students which live and attend school in a city. The district's obligation is fulfilled when it provides bus transportation, reimburses persons who furnish transportation in privately owned vehicles, or utilizes a combination of both. A county has a duty to keep county roads in repair. Whether repairing a road necessarily involves graveling is a question of fact to be determined by the courts. While a family that lives on a county dirt road is obligated to require their children to attend school, that obligation does not encompass graveling the county dirt road. In the absence of a tax levy or establishment of a road benefit district, other adjoining property owners also do not appear to have an

obligation to involuntarily share in the repair expense which would be incurred should the county dirt road be graveled.

Very truly yours,


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