



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 4, 1976

ATTORNEY GENERAL OPINION NO. 76- 142

Mr. Fred Mitchelson
Wheeler & Mitchelson
National Bank Building
Pittsburg, Kansas 66762

Re: Schools--Transportation--Buses

Synopsis: A bus which is operated under contract with a board of education to transport students from the boundaries of that district to its schools may not operate within the boundaries of any other district when not under contract with such other district, utilizing the markings and lighting equipment and warning devices which may lawfully be used only on school buses, *i.e.*, vehicles operated by or under contract with a board of education for the transportation of students within the territory of the contracting district.

* * *

Dear Mr. Mitchelson:

You inquire concerning application of K.S.A. 72-8304 and -8308 to the operation of buses owned by the Arcadia-Mulberry Citizens Association and operated by the Association under contract with Unified School District No. 248. Thereunder, the district contracts with the Association to transport students from the boundaries of the district to its school located at Girard, Kansas.

The contract was drawn to conform to K.S.A. 72-8309, which provides in pertinent part thus:

"It shall be unlawful for the board of education of any school district to furnish or provide transportation for students who

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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 nonresident student, if such student boards the school bus within the boundaries or on the boundary of the transporting school district."

By its formal language, District No. 248 has contracted to furnish transportation for students only from the boundaries of the district to its schools.

However, the buses in question do not operate solely within the boundaries of District No. 248. They operate within the boundaries of District No. 246 to transport students who are residents of that district across the boundaries of that district and into District No. 248. This operation beyond the boundaries of District No. 248 is not within the terms of the contract between District No. 248 and the Arcadia-Mulberry Citizens Association. When operating, then, within the boundaries of Unified School District No. 246, thus, the buses operate solely under the direction and control of the Association, and not in behalf of any unified school district.

K.S.A. 1975 Supp. 72-8302(a) provides the basic authority for transportation of students by Kansas unified school districts:

"The board of education of any school district may provide or furnish transportation for students to or from any school of the school district."

Thus authority is subject, of course, to the restriction that a board of education may not operate its buses in the territories of another district without the consent of the board of education of such other school district.

The buses owned by the Arcadia-Mulberry Citizens Association are "school buses" solely by virtue of the contract between the Association and U.S.D. No. 248. K.S.A. 72-8301(e) prescribes the controlling definition:

"'School bus' means: (1) Any public school bus owned by the school district; or
(2) any privately owned motor vehicle under

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contract or hire to a school district for transportation of students or school personnel. [Emphasis supplied.]

A similar definition is found at K.S.A. 8-1461, a portion of the Uniform Act Regulating Traffic on Highways, thus:

"'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."

When the buses of the Association which are operated under contract with U.S.D. No. 248 drive beyond the boundaries of the district in which they are legally entitled to operate as school buses by virtue of that contract, the vehicles in question cease to be school buses, as a matter of law. When being driven to collect, transport and discharge students residing in U.S.D. No. 246, they operate solely under the auspices of the Association. Its vehicles at that point cease to be "school buses" as that term is defined by both K.S.A. 1975 Supp. 72-8202(a) and K.S.A. 8-1461.

A number of Kansas statutes have been enacted to assure that only those vehicles which legally constitute school buses shall be equipped and marked in the manner prescribed by law for school buses. For example, K.S.A. 1975 Supp. 72-8313 provides that any party who purchases a motor vehicle which was operated by the seller as a school bus

"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."

Under K.S.A. 8-1556(c) every school bus must bear plainly visible identification of a "school bus," which must be covered and concealed when not operated for that purpose:

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"When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or 'activities,' as defined by K.S.A. 72-133, or for maintenance, repair or storage purposes all markings thereon indicating 'school bus' shall be covered or concealed."

Certain lighting equipment and warning devices are required on school buses, but prohibited on other vehicles. *See, e.g.,* K.S.A. 8-1729, -1730.

All such provisions are designed to serve a plainly articulated public policy that, in the interests of safety of school children transported on school buses, such vehicles shall have distinctive color, markings, lighting equipment and warning devices, which shall not be used on any other motor vehicles, or even on school buses themselves when not used for transportation of students. School buses are thus easily identifiable by motorists, who are thus forewarned to follow the rules of the road specially applicable to school buses.

So long as buses owned by the Association are operated under contract with U.S.D. No. 248, and operated pursuant to that contract within the territory of that district, the vehicles so operated legally constitute school buses within both K.S.A. 72-8301 and K.S.A. 8-1461. However, U.S.D. No. 246 may not legally contract for the collection, transportation and discharge of students beyond its boundaries. Thus, when the buses in question owned by the Association transport students within the boundaries of U.S.D. No. 246, those vehicles are not school buses, as that term is defined by either of the cited statutes. At that point, the vehicles are merely carriers operated by a private voluntary association and may not bear the markings of school buses, nor utilize the special lighting equipment and warning devices permitted only on school buses.

You inquire concerning the rate applicable to the transportation of students under the contract between the Association and U.S.D. No. 248. K.S.A. 1975 Supp. 72-8304 authorizes boards of education to contract for the transportation of students, at a rate presently fixed at 13 cents per mile, in certain circumstances:

"In those cases where it is impracticable to reach a student's residence by the prescribed transportation route, and where such residence

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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."

This provision appears inapplicable to the transportation of students in question here. Presumably, the district operates a regular route from the school to the boundary of the district, using the vehicle or vehicles operated under contract with the Arcadia-Mulberry Citizens Association. This being a regular route, the authority provided by K.S.A. 1975 Supp. 72-8304 is inapplicable.

The boundary of the district is the furthest extent to which, of course, the district may contract to provide transportation for students. The vehicles which are so used constitute school buses only so long as they operate within the terms of the contract, and thus, within the territorial boundaries of U.S.D. No. 248. Those same vehicles may not be used to transport students in any other district, when not under contract with the board of education of such other district, utilizing the markings and lighting equipment and warning devices which may lawfully be used only on school buses.

If further questions should arise concerning this matter, please do not hesitate to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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