



STATE OF KANSAS

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July 11, 1977

ATTORNEY GENERAL OPINION NO. 77-222

The Honorable Ronald R. Hein  
State Senator  
2824 Seabrook  
Topeka, Kansas 66614

Re: Schools--Transportation--Buses

Synopsis: Review of Opinion No. 77-35, and the lack of any action by the 1977 legislature to amend the pertinent statutes, requires the conclusion that Unified School District No. 501 still may not provide or furnish transportation to its students pursuant to K.S.A. 1976 Supp. 72-8301 in urban transit buses owned and operated by the Topeka Metropolitan Transit Authority under a contract with said board of education.

\* \* \*

Dear Senator Hein:

Previously, the question has arisen whether a unified school district, and specifically U.S.D. 501, may provide or furnish transportation for its students pursuant to K.S.A. 1976 Supp. 72-8301 *et seq.*, in urban transit buses owned and operated by the Topeka Metropolitan Transit Authority. In Opinion No. 77-35, I responded that such transit buses did not fall within the definition of "school bus" found at K.S.A. 72-8301(e), and that accordingly, the district could not furnish or provide transportation for its students in such buses. You request reconsideration of this opinion, in view of additional arguments set out in your letter.

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In 1968, the legislature enacted House Bill 2053, found at ch. 401, L. 1968, and at K.S.A. 1976 Supp. 72-8301 *et seq.* Section 2 of that bill, now K.S.A. 72-8302, commences thus:

"The board of education of any school district may *provide or furnish transportation* for students to or from any school of the school district." [Emphasis supplied.]

The underscored language is defined by K.S.A. 1976 Supp. 72-8301 thus:

"As used in this act:

\* \* \*

(c) 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; (2) contract, lease or hire buses for the transportation of pupils, students and school personnel; and (3) reimburse persons who furnish transportation to pupils, students or school personnel in privately owned motor vehicles."

Subsection (e) of the definition section, K.S.A. 1976 Supp. 72-8301, defines "school bus" as

"every motor vehicle owned by a school district and operated for the transportation of pupils, students or school personnel to or from school or to or from interschool or intraschool functions or activities, and every motor vehicle privately owned and primarily operated for such transportation of pupils, students or school personnel; but does not include within its meaning any such motor vehicles with a maximum capacity of nine (9) passengers or less if the number of pupils, students or school personnel so transported is equal to or less than such maximum capacity."

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You point out that the words "provide or furnish transportation" are defined to authorize the district to "purchase, operate and maintain public school buses," but that its authority to "contract, lease or hire buses for the transportation of students" refers only to "buses," and not to "school buses." Thus, it is suggested that the authority of the district to contract, lease or hire buses is unrestricted, and applies to any bus, transit or otherwise. The argument requires the inference that the reference to "public school buses" in K.S.A. 1976 Supp. 72-8301(c)(1) and to only "buses" in K.S.A. 1976 Supp. 72-8301(c)(2) signifies a clear legislative intent to distinguish between "school bus" and "bus" in this act. The inference becomes less clear when the reader refers to the definition of "school bus," in which the legislature included both buses owned and operated by the district, and those under contract or hire to it.

I cannot find any consistent distinction in other sections of the 1968 act, or amendments thereto, in which buses owned and operated by the district are identified as "school buses," but buses which are only contracted, leased or hired by the district are identified only as "buses." E.g., K.S.A. 1976 Supp. 72-8305, which authorizes the board of education to provide or furnish transportation for its students and school personnel participating in vocational education courses, field trips in connection with any school course or training, or extracurricular school activities, provides that the district or community junior college may

"pay mileage for those school buses contracted, leased or hired for such purposes, and may adopt rules and regulations governing the use and operation of such school buses."

If the legislature had intended a distinction between "school buses," those owned and operated by the district, and merely "buses," those operated under contract, lease or hire to the district, it would not surely have referred in this section to buses operated under contract, lease or hire as "school buses."

In addition, K.S.A. 1976 Supp. 72-8308 provides thus, in pertinent part:

"In all cases, where a board of education shall furnish or provide transportation of students under the provisions of this act,

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all school busses shall conform to the requirements and be operated in accordance with the uniform act regulating traffic on highways and the regulations adopted by the secretary of transportation."

Assuming the correctness of the argument that the legislature purposefully distinguished between "school buses," those being owned and operated by the district, and mere "buses," those operated under contract, lease or hire with the district, a "bus" operated under contract, lease or hire is excluded from the definition of "school bus" at K.S.A. 1976 Supp. 72-8301(e), and is not required by K.S.A. 1976 Supp. 72-8308 to conform with any requirements of the Secretary of Transportation, or be operated in accordance with the Uniform Act Regulating Traffic on Highways, as it applies to school buses. Assuming that K.S.A. 1976 Supp. 72-8308 reflects a legislative concern for the safe operation of school buses, it is absurd to suggest, in my judgment, that the legislature limited its concern for the safety of school children only to their transportation in buses owned and operated by the district, and not to school children transported in buses leased, contracted or hired by the district.

In short, the definition of "school bus" in K.S.A. 1976 Supp. 72-8301, as enacted in 1968 and as amended since that time, was comprehensively drawn to include both buses owned by the district, and those which the district engaged by contract, hire or lease to provide transportation for its students and personnel. I cannot reasonably infer from the omission of the word "school" in clause (2) of K.S.A. 1976 Supp. 72-8301(c) that the legislature intended to exclude such contract, lease or hire buses from any other provision of the 1968 act or any amendments thereto. In this comprehensive act dealing specifically with school transportation, I cannot find a single clause, phrase, sentence or paragraph which supports the suggestion that omission of the word "school" from K.S.A. 1976 Supp. 72-8301(c)(2) operates to exclude such buses from the definition of "school bus" found at K.S.A. 1976 Supp. 72-8301(e), when that definition is obviously drawn with the express purpose of including therein all vehicles in which a district might furnish transportation for its students.

For these reasons, I remain persuaded that the conclusion reached in Opinion No. 77-35 is correct on this question. In addition, I note that although the 1977 legislature amended the definition of "school bus" in the Uniform Act Regulating Traffic on Highways to include urban transit buses, see ch. 42, L. 1977, it did not

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amend K.S.A. 1976 Supp. 72-8301(e), upon which I clearly relied in my earlier opinion. If the legislature had wished to amend the statutory language relied upon in that opinion, which was issued January 28, 1977, it had ample and abundant opportunity to do so. It did not, however, and after further reviewing the question, I see no justification for a contrary construction of these statutes.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj