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December 27, 1979

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ATTORNEY GENERAL OPINION NO. 79-311

Merle R. Bolton
Commissioner of Education
Kansas Department of Education
State Education Building
120 East Tenth Street
Topeka, Kansas 66612

Re: Schools--Transportation of Students--Contracts
for Payment of Mileage

Synopsis: A school district is authorized to pay mileage to parents for the transporting of their children only in those cases where it is impracticable to provide school bus transportation, either because of difficulty in reaching the student's residence or in scheduling a school bus. However, a district has the affirmative duty of providing transportation in certain situations and may not compel parents to transport their children to or from school. Thus, where parents are unable or unwilling to provide transportation and it is impracticable for the district to provide a school bus, one of the other alternative methods of transportation enumerated in K.S.A. 1979 Supp. 72-8301(c) must be employed.

* * *

Dear Mr. Bolton:

You request our opinion concerning the authority granted to school boards pursuant to the school transportation statutes, K.S.A. 1979 Supp. 72-8301 et seq., regarding the transportation of kindergarten students by their parents.

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You explain that since kindergarten in most districts is provided only on a one-half day basis, the districts are incurring large expenses in providing school bus transportation for both those students who attend morning sessions and those who attend afternoon sessions. That is, in providing school bus transportation to such students, the district buses have been required to run their prescribed routes two round trips per day. As a possible solution to this problem, some school districts have asked the parents of children attending morning kindergarten classes to pick up the children at noon, and the parents of children who attend afternoon kindergarten session to bring the children to the school. In return for this service, the school district, pursuant to K.S.A. 1979 Supp. 72-8304, has paid the parents' mileage for such transportation. We are further informed, however, that there are many parents who do not have a car available at that time of day to provide such transportation for their children.

Based upon these facts, you ask whether the use of such a policy by a school district is allowed by Kansas statutes, and whether a school district may require parents to accept payment of mileage in lieu of providing transportation itself.

We initially note that K.S.A. 1979 Supp. 72-8302(a) requires each school district to provide or furnish transportation for every pupil who resides in the school district and who attends any of the grades kindergarten through twelve at a school of the school district in certain cases where the school building attended by the pupil is more than two and one-half (2 1/2) miles from the pupil's residence. Subsection (b) of K.S.A. 1979 Supp. 72-8301 defines the words "provide or furnish transportation" as having not only their ordinary meaning, but also to include, inter alia, "the right of a school district to . . . (5) reimburse persons who furnish transportation to pupils . . . in privately owned motor vehicles."

In addition, K.S.A. 1979 Supp. 72-8304 provides, in pertinent part:

"[I]n 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

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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.)

Finally, K.S.A. 1979 Supp. 72-8303 provides:

"The board of education of a school district may prescribe the routes on which transportation of its students is to be provided, and shall schedule the school bus and motor vehicle route so that each student entitled to transportation will be transported to and from school on every school day."

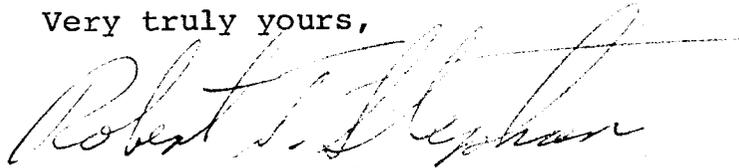
The effect of these statutes is twofold. First, there is clearly a duty imposed upon school districts to provide or furnish transportation services for certain students, and to schedule transportation routes, whether by school bus or otherwise. Second, a district is given the power to make "contracts" for the transport of students in cases where the scheduling of a school bus is impracticable. We note that the term "school bus" is defined by K.S.A. 1979 Supp. 72-8301(g) in a very broad sense to include practically any kind of vehicle capable of transporting more than 10 passengers, whether it is owned by the district or contracted for with a private party. Finally, 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. 1979 Supp. 72-8304, such reimbursement is in the form of mileage, as that figure is set by Kansas Statute. (Currently it is \$.17 per mile-- see K.S.A. 1979 Supp. 75-3203a.)

In light of the above statutes it is our opinion that a school district is authorized to pay mileage to parents for transporting kindergarten students only in those cases where it is impracticable to provide school bus transportation, either because of difficulty in reaching the student's residence or, as here,

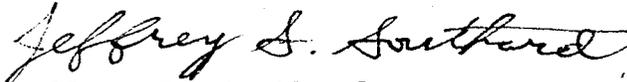
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in scheduling a school bus. However, a district has the affirmative duty of providing transportation in these situations and it may not compel parents to transport their children to or from school. Thus, where parents are unable or unwilling to provide transportation and it is impracticable for the district to provide a school bus, one of the other alternative methods of transportation enumerated in K.S.A. 1979 Supp. 72-8301(c) must be employed.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk