



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 23, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81- 25

Norman W. Jeter
Jeter and Larson
First National Bank Building
P.O. Box 128
Hays, Kansas 67601

Re: Schools--Transportation of Students--Extent to
Which Nonpublic School Pupils Must be Afforded
Transportation

Synopsis: K.S.A. 72-8302 requires a school district to provide or furnish transportation to public school students in a variety of situations where the student lives more than 2 1/2 miles from the attendance center. One method of providing or furnishing such transportation is by reimbursing persons who use privately-owned vehicles to bring the students to school [K.S.A. 72-8301(c)(5)]. Pursuant to K.S.A. 72-8306(b), the school district has the option of extending such service to students of private or parochial schools, as well, and may include money so expended in the amount of its per pupil cost of transportation for purposes of obtaining state aid under the School District Equalization Act, K.S.A. 72-7030 et seq. Cited herein: K.S.A. 72-7039, 72-7047, 72-8301, 72-8302, 72-8304, 72-8306, K.S.A. 1980 Supp. 75-3203.

* * *

Dear Mr. Jeter:

As attorney for Unified School District No. 489 (Hays), you request our opinion on a question concerning the transportation of students who

Norman W. Jeter
Page Two
January 23, 1981

attend parochial schools located in the Hays district. Specifically, you inquire whether the district must pay the cost of transporting such students to their schools, and whether, if the district is so compelled, it can recover such funds from the State of Kansas. As you do not raise any questions concerning the constitutional validity of the use of public funds in this manner, our opinion will be limited to these two points.

You inform us that at the present time it is the policy of the district to reimburse parents of children attending public school for their transportation costs, as permitted by K.S.A. 72-8304. Such reimbursement takes the form of a per mile payment to parents of students who live outside the city limits of Hays and who have to come more than two and one-half (2 1/2) miles into their attendance center. The current rate is set at 17 cents per mile, a rate which does not exceed that authorized for state agencies by K.S.A. 1980 Supp. 75-3203. The district has recently received requests for reimbursement from parents of students in three parochial schools, all of whom live more than 2 1/2 miles from their particular school. Two of the three schools are outside of Hays. We assume for purposes of answering your inquiry that the parents and students in question are residents of Unified School District No. 489

The controlling statute in this area is clearly K.S.A. 72-8306. The statute has three subsections, of which (b) is the most relevant here. Therein, it is stated:

"Whenever any school district shall provide or furnish transportation under authority of article 83 of chapter 72 of the Kansas Statutes Annotated for pupils attending the public schools, it may provide or furnish transportation for pupils residing in the district and attending private or parochial schools of elementary or high school grades which are accredited by the state board of education to such extent and upon such conditions as the school district shall deem appropriate. The authorization contained in this subsection (b) shall be in addition to the requirement provided in subsection (a) of this section." (Emphasis added.)

It is to be noted from this subsection that while the district "may" provide or furnish non-bus transportation to private school students, subject to conditions it deems appropriate, it does not have a duty to do so. This language may be contrasted with that of subsection (a), where it is stated that students in private or parochial schools "shall be entitled to the privilege" of transportation. However, that subsection applies by its terms only to cases where school buses are being employed to transport public school students, and not, as in this situation, where private transport is used. We also note that subsection (b) refers to the "authorization" which it gives rather than the "requirement" provided in the preceding subsection.

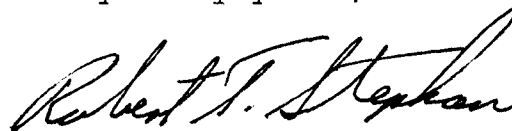
Norman W. Jeter
Page Three
January 23, 1981

If a district does decide to provide reimbursement for the parents of certain of those pupils who attend school at parochial facilities, subsection (c) of K.S.A. 72-8306 requires that it be done "under the same terms and conditions as are imposed upon pupils attending the public schools." Accordingly, the same mileage rate paid to public school children's parents would have to apply, payment would be made only for up to two round trips per day, and in those cases where more than one student is transported in the same vehicle, mileage would be paid for only one. (K.S.A. 72-8304).

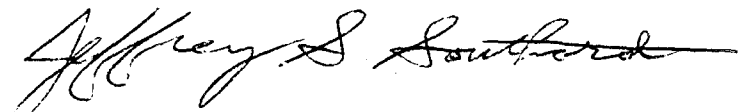
Your second inquiry concerns whether the costs of such discretionary reimbursement can be included in the amount the district may recover from the state under the provisions of the School District Equalization Act, K.S.A. 72-7030 et seq. It would be our opinion that such costs can be so recovered, in that K.S.A. 72-7039(a)(1) includes the cost of transporting both "public" and "nonpublic" pupils in the calculations used to determine the "per pupil cost of transportation." As it is this latter figure which is used in the further calculations set out at K.S.A. 72-7047 to determine the exact amount of money each district will receive in transportation aid, a district may transport parochial school students and still be compensated by the state. However, as is the case for public school students, only those parochial students living 2 1/2 miles or more from their school may be used in computing state aid. K.S.A. 72-7047(f). Therefore, while a district may certainly transport those students living less than this distance, it cannot recover its costs from the state if it does so.

In conclusion, K.S.A. 72-8302 requires a school district to provide or furnish transportation to public school students in a variety of situations where the student lives more than 2 1/2 miles from the attendance center. One method of providing or furnishing such transportation is by reimbursing persons who use privately-owned vehicles to bring the students to school [K.S.A. 72-8301(c)(5)]. Pursuant to K.S.A. 72-8306(b), the school district has the option of extending such service to students of private or parochial schools, as well, and may include money so expended in the amount of its per pupil cost of transportation for purposes of obtaining state aid under the School District Equalization Act, K.S.A. 72-7030, et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General