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May 28, 1981

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ATTORNEY GENERAL OPINION NO. 81- 120

David W. Kester, Director
Legal Services Section
Kansas State Department of Education
120 East 10th Street
Topeka, Kansas 66612

Re: Schools -- Transportation of Students -- Inclusion of
Nonpublic School Students in Equalization Formulas

Synopsis: If bus transportation is provided by a school district to its students, nonpublic school students must be provided such transportation as well, as provided by K.S.A. 72-8306(a). Pursuant to K.S.A. 72-7039, the district 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. 72-7030, 72-7039, 72-7047, 72-8306.

* * *

Dear Mr. Kester:

On behalf of the state Department of Education, you request our opinion concerning the transportation of students who attend nonpublic schools. Specifically, you ask three questions:

- "1. Can students who are regularly enrolled in a nonpublic school but attend a public school for one hour per day be counted as enrolled part time in public schools under the School District Equalization Act?

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- "2. In addition, does it make any difference if the nonpublic student comes to the public school for the one hour of instruction or if the public school teachers conduct the instruction at the nonpublic school?
- "3. If the answer to either question above is affirmative, does the school district then qualify to count such students in computing transportation aid if such students reside in the district and are transported by the district more than 2.5 miles over regular transportation routes?"

In a subsequent telephone conversation, you clarified that it is the third of the above points with which you are concerned, i.e., how may a district be reimbursed for transporting nonpublic school students.

In our opinion, the answer to your inquiry is provided by K.S.A. 72-7039(a). As noted by a prior opinion of this office, No. 81-25, this statute (part of the School District Equalization Act, K.S.A. 72-7030 et seq.) sets forth a formula for determining the "per-pupil cost of transportation" which includes, as its first step, the determination of "the total expenditures of the district during the preceding school year from all funds for transporting pupils of public and nonpublic schools on regular school routes." As it is the per pupil cost figure which is used in the further calculations (set out at K.S.A. 72-7047) which determine the exact amount of money each district will receive in transportation aid, a district may include the cost of transporting nonpublic students in its request for compensation by the state. This ability to recover funds so expended is in accord with K.S.A. 72-8306(a), which mandates the transportation by a district of nonpublic students "upon such regular [school bus] route as arranged for the benefit of pupils attending public schools." In other words, the legislature, while imposing a duty to transport, has also provided a means for reimbursement at the same rate as for public school students.

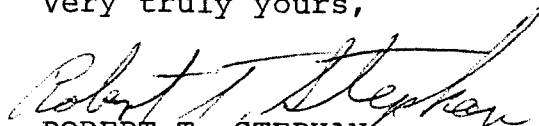
In light of the above, the first two, preliminary inquiries by you are rendered moot. However, we would note that prior opinions of this office exist on both matters. For opinions which approve the concept of "dual enrollment" of parochial students, see letter of January 6, 1969 to M. Hayden (VI Opinions of the Attorney General 528) and letter of April 10, 1972 to C. T. Whittier (VII Opinions of the Attorney General 864).

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As to your second inquiry regarding the situs of public school teachers' instruction of parochial school students, see letter of August 11, 1969 to M. Hayden (VI Opinions of the Attorney General 597) and Attorney General Opinion No. 80-15, both of which find the furnishing of services by public schools at parochial schools to be unconstitutional. We would affirm these prior opinions.

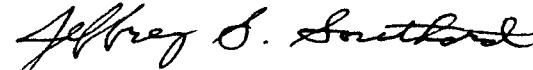
In conclusion, if bus transportation is provided by a school district to its students, nonpublic school students must be provided such transportation as well, as provided by K.S.A. 72-8306(a). Pursuant to K.S.A. 72-7039, the district may include money so expended in the amount of its per pupil cost of transportation for purposes of obtaining state aid under K.S.A. 72-7030 et seq.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle:jm