

SCHOOLS: Consolidated district not required to furnish transportation for elementary pupil assigned to a school in another county when such other school is within $3\frac{1}{2}$ miles of the pupil's home.

August 18, 1945



Hon. A. L. Luther
Prosecuting Attorney
Memphis, Missouri

Dear Sir:

This will acknowledge receipt of your letter in which you submitted the following for our opinion:

"The Bible Grove Consolidated School District No. 2 was formed in this county along about 1924 and all of the outlying elementary schools were closed with the exception of one which served pupils living more than $3\frac{1}{2}$ miles from the central school. This elementary school was operated for several years and when the attendance fell below 10 pupils the board of directors of the district closed the school. For a time pupils were transported to the central school building. Now the board of directors have intimated that these pupils living more than $3\frac{1}{2}$ miles from the consolidated school to be maintained, it being the only school to be in operation, are to be assigned to schools outside of the district which are less than $3\frac{1}{2}$ miles from the pupils and that there is no transportation to be provided to these assigned pupils. One of the pupils living within the consolidated district more than $3\frac{1}{2}$ miles for the consolidated school would be assigned to the nearest school which is a distance of 3 miles from the nearest school outside of the district.

Question: Is the statute mandatory that the assigning school, (Consolidated School District) pay transportation on this pupil?"

Section 10495, R. S. No. 1939 provides how a consolidated school district may be formed. Said section reads in part as follows:

"* * * The county superintendent of schools shall call a special meeting of all the qualified voters of the proposed consolidated district for considering the question of consolidation. He shall make this call by posting within the proposed district ten notices in public places, stating the place, time and purpose of such meeting. * * *"

Section 10496, about which you inquire, provides as follows:

"The question of transportation of pupils may be voted upon at the special meeting above provided for, if notice is given that such a vote will be taken. If transportation is not provided for in any school district formed under the provisions of sections 10493 to 10500, inclusive, it shall then be the duty of the board of directors to maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district: Provided, transportation of pupils or the maintenance of elementary schools within three miles and a half of each child of school age in the district shall not be required in consolidated districts now or hereafter organized under the provisions of sections 10493 to 10500, inclusive, where such consolidation has not placed said children further from an elementary school than they were prior to said consolidation: Provided, however, no transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 10461: Provided further, that when the average attendance in any elementary school for any month falls below ten, the school board shall have authority to close such elementary school for the remainder of the term and provide transportation for the pupils of such elementary school to some other elementary school or schools in said district."

We believe a fair interpretation of Section 10496, supra, is that it is the intention of the legislature that elementary pupils in a consolidated school district should either be provided a school within three and one-half miles of their home or that they should be transported to some school. The Section provides that if the consolidated district does not furnish transportation it is mandatory that the district "maintain an elementary school within three and one-half miles by the nearest traveled road of the home of every child of school age within said school district," except in the situations covered by the provisos in the section. The first proviso excuses the maintenance of transportation for pupils whom the consolidation has not placed further from an elementary school than they were prior to said consolidation. The second proviso excuses the maintenance of transportation for pupils who live within three and one-half miles of any school, and provides that in such case, assignment shall be made as provided by Section 10461. This latter proviso is designed to cover the situation outlined in your letter.

It should be noted that the second proviso of Section 10496 provides that:

"No transportation shall be furnished if there be any school within three and one-half miles of such pupil but assignment shall be made as provided by Section 10461."

Section 10461, referred to in said proviso reads as follows:

"Whenever any pupil is so located that an adjoining school is more accessible, the county superintendent shall have the power and it shall be his duty to assign such pupil to such adjoining district: Provided, if a school district shall be divided by a county line, or it is deemed advisable to assign pupils to a district in an adjoining county, then the county superintendent of the county wherein the pupil resides shall make the assignment, subject to an appeal to the state superintendent by any county superintendent whose county is affected, and the decision of the state superintendent shall be final: Provided, the attendance of such assigned pupil shall be credited for the purpose of apportionment of state funds to the district in which the student lives, and the board of directors of the district in which said student lives shall pay the tuition of such pupil or pupils so assigned: Provided, such tuition shall not exceed the pro rata cost of instruction."

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It will be seen that by said section 10461, pupils can be assigned to schools in another county from that in which they reside. Nothing is said in said section about transporting such pupils to the school to which they are assigned, but said section does provide for paying the tuition of such assigned pupils. Said section 10461, therefore, provides a free school for such assigned pupils, but it leaves it up to the pupils to get to the school. Therefore, when Section 10496 provides that in a certain case assignment shall be made as provided by Section 10461, it does not require that said pupils be transported to the school to which they are assigned, but it only requires that their tuition be paid to such school.

CONCLUSION

It is, therefore, the opinion of this office that when an elementary pupil residing in a consolidated school district is assigned to a school in another county and such other school is within three and one-half miles of the home of such assigned pupil, it is not required nor mandatory that the sending district provide transportation for such assigned pupil.

Yours very truly,

HARRY H. KAY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

HHK/vlv