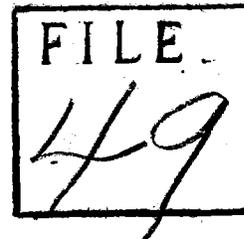


SCHOOLS: School district transporting non-resident high school pupils may be paid the cost in excess of three dollars by the "sending" school district.

March 13, 1942

3-51



Hon. Lloyd W. King
State Superintendent of Schools
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"The proper and adequate financing of public school transportation of high school pupils from rural areas in this state has presented many problems. The maximum state apportionment as reimbursement to school districts, on account of expenditures incurred in providing transportation, is \$3.00 per month for each pupil transported. The cost of transporting non-resident high school pupils in a majority of cases exceeds \$3.00 per month.

"Section 10327, R. S., 1939, makes provision for the transportation of non-resident high school pupils as follows:

"1. The board of directors of any district (rural, etc.), that does not maintain a high school may transport the high school pupils whose tuition it is obligated to pay. The cost of such transportation may be paid from the incidental fund and state transportation reimbursement.

"2. The board of directors of a district (high school) that admits non-resident pupils to its high school may make provision for transporting such pupils; provided, that no money apportioned to such district from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transportation.

* * * *

"The cost of transportation of non-resident high school pupils provided by the high school district usually is greater than \$3.00 per month, the maximum reimbursement to districts. If the high school district is limited in its expenditures to the amount received for such transportation, the additional cost in excess of \$3.00 per month must be forthcoming from some other source. For example: If the cost is \$4.00 per month for each pupil transported, and the high school district receives only \$3.00 per month as reimbursement from the state, the additional \$1.00 per month must come from another source.

"The rural or sending district has authority under the law to provide transportation of its high school pupils, whose tuition the district is obligated to pay, but does not take advantage of this law because of the uneconomical conditions of small unit transportation. Therefore, would it be legal for such sending district to pay to the high school district that provides transportation for its pupils the additional cost in excess of \$3.00, or \$1.00 per month as illustrated above?

"In brief, is it legal for the receiving and sending school districts to cooperate in providing transportation facilities for non-resident high school pupils in meeting the cost of such transportation whereby the receiving district would use all moneys received from the state to help pay the cost of such transportation, and the rural or sending district would pay from its own incidental fund the additional cost in excess of \$3.00 to the high school district in order that the full transportation expenditures may be made by school district?
* * * * *

The free transportation of school children has been a practice recognized for some years in this State. The obvious purpose of such laws is to facilitate the opportunity of every child in this State to obtain an education. While there is some confusion arising from inconsistencies in the various laws relating to this subject, still we believe that the statutes, as a whole, disclose a unity of purpose and intent.

It is a well-recognized rule of statutory construction, that in order to determine the intent of the legislature as to the meaning of various statutes, that the history of the legislation therein may be looked to. (State v. Forest, 162 S. W. 706, 59 C. J. 1017.)

What is now Section 10326 R. S. Missouri, 1939, was enacted in 1911, (L. of 1911, P. 397.) This statute was identical with its present form, except that the last proviso extending transportation to private schools was not a part thereof, this clause being added in 1939. That section provides as follows:

"Whenever the board of directors of any school district or board of educa-

tion of a consolidated district shall deem it advisable, or when they shall be requested by a petition of ten taxpayers of such district, to provide for the free transportation to and from school, at the expense of the district, of pupils living more than one-half mile from the schoolhouse, for the whole or for part of the school year, said board of directors or board of education shall submit to the qualified voters of such school district, who are taxpayers in such district, at an annual meeting or a special meeting, called and held for that purpose, the question of providing such transportation for the pupils of such school district: Provided, that when a special meeting is called for this purpose, a due notice of such meeting shall be given as provided for in Section 10361. If two-thirds of the voters, who are taxpayers, voting at such election, shall vote in favor of such transportation of pupils of said school district, the board of directors or board of education shall arrange for and provide such transportation. The board of directors or board of education shall have authority and are empowered to make all needful rules and regulations for the free transportation of pupils herein provided for, and are authorized to and shall require from every person, employed for that purpose, a reasonable bond for the faithful discharge of his duties, as prescribed by the board. Said board of directors or board of education shall pay by warrant the expenses of such transportation out of the incidental fund of the district: Provided, that this section shall include pupils attending private schools of elementary and high school grade except such schools as are operated for profit."

In 1919 the general assembly provided that in counties having a population of 250,000, and less than 500,000, school districts which did not have a high school could send their pupils to an adjoining district and pay the cost of the tuition and transportation. These were the only two sections relating to transportation of students until the passage of what is known as the 1931 School Law. In that law it was provided that a school district which did not maintain a high school could send its pupils to a high school in another district in the same, or an adjoining county, and the tuition could be paid by the sending district. The statute further provided: (L. of Mo. 1931, P. 334.)

" * * * Provided further, that when any school district makes provision for transporting any or all of the children of such district to a central school or schools and the method of transporting and the amount paid therefor is approved by the state superintendent of schools, the amount paid in state funds for transportation, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district: * * * ."

In 1935, Section 16, supra, was amended and the clause relating to transportation was taken out of said section and a new section relating to transportation was enacted. This act provided, as follows:

"When any school district makes provision for transporting any or all of the pupils of such district to a central school or schools within the district, and the method of transporting is approved by the state superintendent of schools the amount paid for transportation, not to exceed three

dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district for the ensuing year. When the board of directors of any school district makes provision for transporting the high school pupils whose tuition it is obligated to pay, to the school or schools they are attending, and the method of transporting is approved by the state superintendent of schools, the amount paid for transporting such pupils, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the state apportionment to such district for the ensuing year, if no part of the minimum guarantee of such district has been used to pay any part of the cost of transporting such pupils. When the board of directors of a district that admits non-resident pupils to its high school makes provision for transporting such pupils to such high school and the method of transporting and the transportation routes are approved by the state superintendent of schools before the transportation is begun, the amount spent for transporting such pupils, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the state apportionment to such district for the ensuing year, if no money apportioned to such district from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transporting such pupils: * * ."

(Section 10327 R. S. Missouri, 1939).

In 1939, Section 10326, supra, and Section 16, which is now 10327, were both amended by a proviso being added extending the privilege of transportation to private schools which are not operated for profit.

The question presented in your request is: Whether three dollars is the maximum amount that may be spent for transportation, or whether the three dollars is the maximum that may be paid by the State in aid of such transportation.

It is a rule well recognized in law that a school district does not have the right to provide free transportation for its pupils in absence of a specific enactment by the legislature granting to said district this privilege. (State ex rel Beard v. Jackson, 168 Ind. 389; Shanklin v. Boyd, 146 Ky. 460; State ex Boynton v. Bunton, 141 Kas. 103.)

Reviewing the history of the statutes relating to transportation, it will be seen that from 1911 until 1931 the only transportation that could be provided by a school district was that to its resident pupils to a school within the district. When Section 10326 R. S. Missouri, 1939, says that there shall be transportation "to and from school", it means to a school located in the district. (Gould School District v. Holdtorff, 171 Ark. 668, 285 S. W. 357; State ex rel Keller v. Board of Education, 11 Ohio App. 298.) The sole exception was that in counties having a population of 250,000, a school district having no high school could pay the cost of transporting the pupils to a high school in another district. However, the expense of transportation in both instances was borne entirely by the district.

Therefore, for a period of twenty years the burden of paying for the transportation of pupils was placed upon the school districts.

The 1931 provision seemed to carry out this view, in that it provided that "the amount paid in state funds for transportation" would not exceed three dollars per month. The legislature recognized that this three dollars

paid by the State was merely in aid of the transportation costs and that the districts still had the right to pay any amount needed in addition to that received from the State.

Therefore, the three dollars provided for was not the maximum amount that could be paid for transportation, but only set a limit to the amount that the State could pay to a school district.

The 1935 amendment in the first two clauses, however, provided that "the amount paid for transportation, not to exceed three dollars per month for each pupil transported for a distance of two miles or more" shall be a part of the money received from the State. In the third clause it provided "the amount spent" for transporting pupils should be a part of the State aid.

While the words "in State funds" were omitted, we believe that the meaning of the words is the same, that is, that the district, as a part of its State aid is to receive an amount not to exceed three dollars to assist it in the transportation of pupils. This is a fair construction of the language in the section and is also in line with the policy and intent of the legislature as evidenced by the previous enactments. The general assembly did not mean to take away from the school district the power to pay for transportation from district funds, but intended only to extend to these districts help and aid in carrying on the transportation of pupils. This intent is further shown by the title to the 1939 Act, in which this payment, received from the State is designated as "State aid." (L. of Missouri, 1939, P. 718.) The title shows that the three dollars was merely to "aid" the school districts, and was not to cover the entire cost of transportation.

Section 10326, supra, sets up the method whereby money may be raised to pay for the transportation of resident pupils to a school within the district, which money is to augment the money received from the state under the first clause of Section 10327, supra, if said extra money is needed. However, in so far as the second and third clause s are concerned, which provide for state aid where a district with no high school sends its pupils to another high school, or when a high school district, admits non-

resident pupils, there is no statute which provides how the money may be raised by the district to accomplish and carry out these activities.

It is a well settled rule of law that whenever a duty or power is conferred by statute upon a public officer, all necessary authority to make such power fully efficacious or to render the performance of such duty effectual is conferred by implication. (State ex Bybee v. Hackman, 207 S. W. 785, 276 Mo. 110, 46 C. J. 1032.)

Therefore, since the right to send the pupils to a high school in another district is given by the statute we believe that the right to spend money therefor necessarily accompanies such right, and is implied therein.

CONCLUSION

Therefore, it is the opinion of this department, that a school district which provides transportation facilities for high school pupils from another district, for which said district receives the amount of Three Dollars per month as reimbursement from the State, may be paid the amount in excess of the Three Dollars which it costs said district to transport the non-resident high school pupils by the school district from which the pupils come.

This additional cost shall be paid by the "sending" school district out of its incidental fund.

Respectfully submitted,

APPROVED:

ARTHUR O'KEEFE
Assistant Attorney General

ROY McKITTRICK
Attorney General of Missouri

2530
12
2/13/42