

SCHOOLS: Board of directors in common school district  
SCHOOL DISTRICTS: may employ parent of child to transport such  
SCHOOL TRANSPORTATION: child to school, but may not employ the child  
himself or make allowances to such child in  
lieu of transportation; school districts not  
liable in tort for negligence of driver.



November 12, 1953

Honorable Joseph M. Bone  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

Dear Mr. Bone:

This is in response to your request for opinion dated September 9, 1953, which, omitting caption and signature, reads as follows:

"The president and clerk of the school board of Union School District 94, Audrain County, Missouri, have requested me to obtain an opinion from the Attorney General on the following points relative to the transportation of pupils of the district as follows:

1. Do the Directors of the school district have the power and authority to make payments from the public school funds of said district to a parent of a pupil of said district, if the parent furnishes the transportation to a public school?
2. Whether or not the Board of Directors has the power and authority to make such payments or allowances to a pupil of a district attending public school and furnishing his own transportation?
3. If the school Directors have the power and authority mentioned in questions one and two, would they be authorized to make such payments and allowances, if said school district maintained a school bus for the transportation of pupils of said district attending a public

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school, or could they still make these allowances in individual cases where private transportation is furnished either by the pupils or their parents where they do not use public school bus facilities of the district?

4. If allowances are made for private transportation of pupils as indicated in questions one and two, would the school district be liable to said pupils or a third party in the event of an accident?"

We have been informed by you in a subsequent letter that the school district in question is a common school district.

1. The statute applicable to all districts, which authorizes the board of directors of a common school district to provide free transportation of pupils, is Section 165.140, RSMo 1949. That section reads as follows:

"Whenever the board of directors of any school district or board of education 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 165.037. 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

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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.)"

Under the circumstances mentioned therein it is to be noted that the board of directors "shall arrange for and provide such transportation." The manner in which such transportation shall be provided is not specified.

In State ex rel. Rice v. Tompkins, et al., 239 Mo. App. 1113, 203 S.W. (2d) 881, 883, the St. Louis Court of Appeals said:

"When transportation in a school district has been voted it is the duty of the Board of Directors or Board of Education to provide for such transportation, providing money is available in the incidental fund of the district to meet the expense thereof, and if the Board, without reasonable cause therefor, fails to provide transportation, it may be compelled to do so by mandamus. However, this does not mean that the court may by the hard and unyielding writ of mandamus substitute its discretion for that of the Board as to the means and manner and sufficiency and safety of the transportation to be furnished. \* \* \*

"The statute expressly vests with the Board the right and duty of making all needful rules and regulations for the free transportation of pupils and to prescribe the duties of the person employed for the purpose of such transportation, - which in this case would be the bus driver."

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Therefore, it is apparent that the Legislature vested the board of directors with the discretion of determining the method and manner in which the transportation should be provided. This being so, there would seem to be nothing to prevent a board of directors from employing the father of a child to transport such child to school if, in the exercise of its discretion, it would be advisable to do so and provided that the other requirements of law are met.

More specifically, you will note that Section 165.140, supra, provides that the board "shall require from every person, employed for that purpose, a reasonable bond for the faithful discharge of his duties, as prescribed by the board." The contract of employment must be in writing and meet the other requirements prescribed in Section 432.070, RSMo 1949. If state aid is sought, the method of transportation must meet the approval of the State Board of Education as provided in Section 165.143, RSMo 1949. The unit of transportation is also subject to the inspection of the county superintendent of schools under Section 167.050, RSMo 1949. In other words, if the father of a child is to be employed by the district for the purpose of transporting such child to school, he must be treated the same as any other individual employed for that purpose.

2. Your second question must be answered in the negative. The only authority which the board of directors has with regard to this question is to provide the transportation. It has no authority to make payments to any individual in lieu of providing the transportation. Many states have statutes authorizing such payments, but we have none.

The effect of paying a child who transported himself would be the same as a payment in lieu of transportation because it would not be logical to say that the board could employ the child to transport himself to school and to require the child to give bond for the faithful discharge of the duties of transporting himself. In addition, such a bond would be of doubtful, and at least limited, validity since executed by a minor (31 C. J., Infants, Section 189, page 1083). Further, the employment must be by written contract, and an infant, subject to certain exceptions, does not have the capacity to bind himself absolutely by contract (31 C. J., Infants, Section 148, et seq., page 1058).

Therefore, we do not believe that the board of directors of a common school district has the power and authority either to employ or to make payments or allowances to a pupil who furnishes his own transportation.

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3. We have ruled that the board of directors does have the authority mentioned in question number 1, but not that mentioned in question number 2. Therefore, our answer to question number 3 is based upon this premise.

Having held that, by virtue of its discretion to do so, the board may employ a parent to transport his child to school if the parent meets all the requirements established for the employment of any other competent person for this purpose, it follows that the circumstances under which this may be done also lies within the sound discretion of the board. Consideration should be given to the economic practicality of the arrangement, i.e., whether it would be economical for the district to do so, and to the basic purpose of the free transportation law which is to facilitate attendance at school. No hard and fast rules can be laid down by which the board can be guided in determining under what circumstances it should or should not contract with the parent of a child to transport such child to school. It should be further borne in mind that if state aid is sought, the method of transportation must meet the approval of the State Board of Education. In essence, however, the board must exercise its discretion in this regard.

4. This office held in an opinion directed to Honorable Stephen J. Millett, Prosecuting Attorney of Caldwell County, Braymer, Missouri, under date of January 12, 1940, that a school district is not liable in tort for the negligence of its bus driver. Since we believe that opinion adequately answers your question numbered 4, we are enclosing a copy of that opinion.

#### CONCLUSION

It is the opinion of this office that the board of directors of a common school district has the power and authority to employ the parent of a child for the purpose of transporting such child to school, provided that all the requirements of law with regard to the employment of any person for that purpose are met. This office is of the opinion, however, that a child who furnishes his own transportation may not be employed for that purpose nor may allowances be made to him in lieu of providing free transportation for him.

The board may exercise its discretion in determining under what circumstances a parent may be employed for the purpose of transporting his child to school.

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It is the further opinion of this office that a school district is not liable in tort for the negligence of its driver employed for the purpose of transporting children to school.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Very truly yours,

JOHN M. DALTON  
Attorney General

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Enc.