

SCHOOLS: Board of education in reorganized district has authority to sell district-owned buses in manner and number deemed advisable by the board; sale must be for cash; board may contract with private bus owners to transport children of public schools and such contract may extend beyond one year's duration.

SCHOOL DISTRICTS:

SCHOOL TRANSPORTATION:



November 10, 1953

Honorable Meredith Garten  
Pierce City, Missouri

Dear Senator Garten:

This is in response to your request for an opinion dated October 24, 1953, which reads, in part, as follows:

"I am requested by some of my constituents to obtain the opinion of your office on these matters:

"Does a school board in a reorganized school district have authority to sell district owned buses?

"Can the buses be sold individually or would they all have to be sold if some were and to one purchaser? What would be procedure of the sale?

"Must sale be entirely for cash or part payments? Can the board of education enter into a contract with private purchasers of buses for transportation of public school pupils and can they contract for more than one year?"

Section 165.687, RSMo 1949, provides for the election of six directors in reorganized districts and that such directors shall be governed by the laws applicable to six director districts. The law governing districts generally is found in Sections 165.010 through 165.160, RSMo 1949, and that governing six director districts, i.e., city, town and consolidated districts, is found in Sections 165.263 through 165.653, RSMo 1949.

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Section 165.327 reads, in part, as follows:

"The board of education of any town, city or consolidated school district, shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the state; \* \* \*"

Section 165.317 vests the government and control of such a district in the board of education. Section 165.700 states that the board of education in a reorganized district is authorized to provide free transportation for pupils under certain circumstances. That section reads:

"In all school districts enlarged under the provisions of sections 165.657 to 165.707, and in all school districts heretofore enlarged and which are hereafter approved by the state board of education as enlarged districts, the board of education is authorized to provide for the free transportation of pupils living more than one mile from any central school building and state transportation shall be granted to such districts in the amount and in the manner as provided in section 165.143."

The power of a board of education in a consolidated district was questioned in the case of *Crow v. Consolidated School Dist. No. 7*, Mo. App., 36 S.W. (2d) 676. There the board was proposing to change the school site and to purchase land for that purpose. Plaintiffs contended that the board did not possess this power, that it was vested in the voters of the district. The court, however, refuted this contention by saying that the powers of the board of education of a consolidated district are restricted to the same extent "as the boards of other school districts acting under the general school laws of the state" (See Sec. 165.327), but that there was no section applicable to six director districts or to districts generally which purported to vest the power to change school sites in the voters of the district. The only section which so provided was applicable only to common school districts. Since the board of education was vested with the government and control of the district and no statute applicable to such a district vested in the voters of the district the authority to change sites, the court said it was clear that the

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Legislature intended to vest this authority in the board of education.

With regard to the question submitted herein, the law is the same today as it was at the time of the decision in the Crow case. The board of education in the reorganized district is vested with the authority to provide transportation for pupils under Section 165.700, RSMo 1949. It has the government and control of the district, with no statutory limitation as to its authority over the personal property of the district or the manner in which it shall provide the transportation.

Since it may reasonably be necessary to buy and sell buses in order to provide transportation and since the authority to do so must be vested somewhere, in the absence of any statute specifically limiting this authority to the voters of the district it is our opinion that the board of education of a reorganized district has the authority to sell district-owned school buses if in the exercise of its discretion it would be advisable to do so.

The proposition is thus stated in 78 C.J.S., Schools and School Districts, Section 267, page 1247:

"A school board may sell personal property belonging to the district, such as school busses, when it believes that such action is necessary for the best interests of the district, \* \* \*"

In view of the broad authority thus granted to the board of education of a reorganized district, the board may also exercise its discretion as to the number of buses which it deems advisable to sell and as to the procedure of selling them. The procedure followed should be that which, in the opinion of the board, will realize the most net proceeds from the sale for the benefit of the district.

Above we have been dealing with the power of a board of education of a reorganized district, having first established the fact that the district itself has been given statutory authority to provide free transportation for its pupils under certain circumstances and conditions. However, it must be borne in mind that before any action can be taken on behalf of a school district in any specific case by anyone, the authority for the action of

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the district must be either expressly conferred by statute or necessarily implied from some other power conferred.

The courts of this state have so held on numerous occasions. For example, see *State v. Kessler*, 136 Mo. App. 236, 240, 117 S.W. 85; *Consolidated School Dist. No. 6 of Jackson County v. Shawhan, Mo. App.*, 273 S.W. 182, 184; *Wright v. Board of Education of St. Louis*, 295 Mo. 466, 246 S.W. 43.

The law generally in this regard is stated in 78 C.J.S., *Schools and School Districts*, Section 244(b), page 1202:

" \* \* \* Public policy forbids the bartering of public school property or its sale for anything other than money, and authority to sell does not of itself imply authority to sell on credit, \* \* \*"

Since a sale on part payments would, in effect, be a lending of money to the purchaser, and we find no statute authorizing a school district to engage in the business of lending money or to sell on credit, we believe that the sale of buses contemplated by your request would have to be for cash.

This office, under somewhat similar reasoning, so held, with regard to the sale of real estate, in an opinion directed to Honorable Charles B. Butler, Prosecuting Attorney of Ripley County, under date of September 2, 1942, a copy of which we enclose.

We have pointed out above the broad authority given to boards of education in a reorganized district to provide transportation for its pupils without restriction as to the manner in which this transportation is to be provided. Therefore, we believe it is beyond question that a board of education in a reorganized district does have authority to contract with private bus owners for the free transportation of children to the public schools.

Although that specific question was not raised, such a contract received implicit approval in *Cardwell v. Howard*, Mo. App., 137 S.W. (2d) 652.

In the *Cardwell* case the primary issue involved was the right of a board of education in a consolidated district to contract with a private bus owner for the transportation of children for a period of three years. It was contended by defendant that the contract in question was void because it was not to be performed in one year. The court summarily dismissed this contention by saying, *l.c.* 654:

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"The first assignment insisted on here is that the court erred in not sustaining the demurrer to the petition, because it shows that the contract entered into was not to be performed within one year. We deem it unnecessary to discuss this assignment at length. We hold against this contention. We base this conclusion upon the reasoning of our Supreme Court in the case of Tate v. School District No. 11 of Gentry County, 324 Mo. 477, 23 S.W. 2d 1013, 70 A.L.R. 771."

In the Tate case, cited in the above quotation, the Supreme Court held that a school board is a continuous body and that it may bind succeeding boards, provided that the contract is entered into in good faith, without fraud or collusion and for a reasonable length of time.

Therefore, we feel it is clear that the board of education in a reorganized school district may contract with a private bus owner for a period in excess of one year, provided that it is done in good faith, without fraud or collusion and for a reasonable length of time.

#### CONCLUSION

It is the opinion of this office that the board of education in a reorganized school district may sell the district-owned buses if in the exercise of its discretion it is deemed advisable to do so. The board may also exercise its discretion as to the number of buses to be sold and the procedure to be followed in making the sale.

It is the further opinion of this office that such a sale must be for cash and that the board may contract with private bus owners for the transportation of children to public schools for a period in excess of one year, if desired, provided the contract is entered into in good faith, without fraud or collusion and for a reasonable length of time.

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.