

OFFICIAL OPINION NO. 75-199, Payment of transportation allowance for elementary students

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Mr. Thomas C. Todd
State Superintendent
Elementary & Secondary Education
Kneip Office Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-199

Payment of transportation allowance for elementary students

Dear Mr. Todd:

You have requested an official opinion from this office based on the following factual situation:

"X," a parent, lives on a fixed publicly used road five miles from the rural attendance center where his elementary students attend school. During the course of the school year, the students of "X" are transported by car by "X" in the morning and returned by "X" in the afternoon part of the time. At other times the students of "X" are transported in the morning and returned in the afternoon by a teacher who teaches at the attendance center. At other times the students of "X" are transported in the morning and returned in the afternoon by a neighbor, and at yet other times the students of "X" are transported by snowmobile in the morning and returned in the afternoon by "Y" who is an 8th grade student and child of "X" and attends school at the same rural attendance center.

It is assumed that "X" pays the teacher and the neighbor for transporting the students of "X" with cash or reciprocates by also transporting the teacher and the students of the neighbor to the rural attendance center.

Based upon the above factual situation you have asked the following questions:

1. What is the authorized travel allowance under SDCL 13-30-3 that "X" is entitled to when "X" transports the students in the morning and returns them in the afternoon?
2. What is the authorized travel allowance under SDCL 13-30-3 that "X" is entitled to when the students are transported by the teacher in the morning and returned in the afternoon?
3. What is the authorized travel allowance under SDCL 13-30-3 that "X" is entitled to when the students are transported by the neighbor in the morning and returned in the afternoon?
4. What is the authorized travel allowance under SDCL 13-30-3 that "X" is entitled to when the students are transported by "Y" in the morning and returned in the afternoon?

Assuming that the children of "X" are legally assigned to the rural attendance center the following statute is relevant:

13-30-3. The amount of the transportation allowance shall be eight cents per mile for distances actually traveled in excess of two and one-half miles each way, provided that no travel allowance shall exceed the limit of seven hundred dollars per family and provided that no mileage shall be paid for extra trips to the schoolhouse which the school board does not deem necessary nor for more miles than would have to be traveled if the shortest fixed publicly used roads were traveled. Such distance shall be measured from the place on such publicly used road nearest the dwelling house of the child to the schoolhouse site.

As is apparent from the statute, the school board has discretion in determining travel expenses subject, of course, to the maximum limitations and conditions therein. However, as is stated in 1955-56 AGR 343:

The philosophy behind all transportation legislation is to provide free education in public schools for children; and when parents are forced to incur an expenditure for transporting their children to school, education would not be free.

Therefore, it is my opinion that "X" is entitled to reimbursement for expenditures actually incurred in transporting or providing transportation for his children. The Legislature has determined that the reasonable cost of transportation shall be eight cents per mile for distances actually traveled in excess of two and one-half miles each way. The mode and method of transportation is left to the discretion of the parent so long as it is reasonable.

The answer to your question number 1 is that "X" is entitled to two round trips per day transportation allowance. See 1965-66 AGR 173, 1955-56 AGR 342.

The answer to your question number 2 is that "X" is entitled to a travel allowance for one round trip per day. See 1953-54 AGR 221.

Under your question number 3 it is my opinion that "X" is not entitled to any transportation allowance. The neighbor is the party entitled to be reimbursed by the school district for travel expenses. "X" and his neighbor have voluntarily entered into an arrangement for joint transportation of their children. Therefore, assuming the reciprocal agreement results in "X" and his neighbor driving approximately the same number of school days and miles, each is entitled to reimbursement only for days and miles actually driven. To the extent this opinion is inconsistent with that at 1965-66 AGR 173, it supersedes the same.

The answer to your question number 4 is: "X" is entitled to one round trip per day travel allowance since one round trip is all that is necessary. 1955-56 AGR 342.

Respectfully submitted,

William Janklow
Attorney General

WJJ:LLV:dh