

Official Opinion No. 81-38, Provision of Transportation Service Pursuant to SDCL 13-29-1

October 15, 1981

Mr. Robert E. Hayes
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Official Opinion No. 81-38

Provision of Transportation Service Pursuant to SDCL 13-29-1

Dear Mr. Hayes:

You have requested an official opinion from this office in regard to the following facts:

FACTS:

The Sioux Falls School District is considering adopting a policy which would provide transportation services, either through actual provision of bus transportation or mileage reimbursement, to students and parents of students who live in excess of one mile from the attendance center the student is assigned to attend. In considering this policy the Board would like to determine whether a fee could be charged for providing this service.

Based upon those facts you have asked the following question:

QUESTION:

May a school district which elects to provide bus transportation services pursuant to SDCL 13-29-1 levy a charge or fee for the provision of such services to students for whom transportation or a mileage allowance need not be provided under the terms of SDCL ch. 13-30?

SDCL 13-20-2 and 13-30-3 provide:

13-30-2. Elementary and secondary pupils who live within the incorporated limits of a city shall receive a transportation allowance only at the discretion of the school board.

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

Clearly, a school board is allowed to provide a transportation allowance to pupils who live within the incorporated limits of a city if it so desires pursuant to SDCL 13-30-2. There is, however, no authorization to provide reimbursement to the parents transporting children to school distances less than two and one-half miles. There is no such authority because SDCL 13-30-3 allows reimbursement only for distances 'actually traveled in excess of two and one-half miles.' Accordingly, the proposed policy considered by the Board at the July 27, 1981, meeting identified as action 19791 could not be implemented insofar as it purported to pay mileage reimbursement to parents of students who transported students less than two and one-half miles.

Turning to the issue directly raised by the question you present, SDCL 13-30-1 provides:

The following types of students who do not have access to bus service furnished by the school district to and from school shall be entitled to a transportation or board and room allowance, provided in this chapter, to be paid by the district wherein the student has school residence regardless of the type or method of conveyance used for transportation:

(1) The elementary student who attends an elementary school to which he had been assigned and which is located more than two and one-half miles from his residence in either the same or any other school district;

(2) The secondary student who attends a high school which is located in the same district wherein the said student is a resident and which is more than two and one-half miles from the student's residence, provided such transportation is authorized by his school district board;

(3) The secondary student who resides in a common school district and attends a high school which is located more than two and one-half miles from his residence; provided, however, that the amount of such transportation allowance shall be based on the distance to the nearest high school whether or not such student attends the nearest high school or some other high school, and if the amount of such transportation allowance shall exceed

thirty dollars per month per pupil, the school board shall pay a board and room allowance, as provided in § 13-30-4, in lieu of the transportation allowance, provided further that such transportation or board and room is authorized by his school district board;

(4) The secondary student who resides in a district described in § 13-15-14 who attends any high school located more than two and one-half miles from his residence provided such transportation is authorized by his school district board.

A school district having a junior high school may provide mileage, bus service, or board and room for junior high school students at the discretion of the school board.

SDCL 13-29-1 provides:

The school board of any school district may acquire, own, operate, or hire buses for the transportation of students to and from its schools either from within or without the district or for transportation to and from athletic, musical, speech, and other interscholastic contests in which participation is authorized by the school board. If the use of a school bus is granted by the school board as provided in subdivision (1) of § 49-28-2, the school district shall not be held liable for suit or damages which may arise as the result of the use. The school board may authorize the use of the buses owned by the board for transportation of adults pursuant to subdivision (1) of § 49-28-2. The provisions to transport adults, provided in this section, shall not apply to school districts which contain a first class municipality.

The implication arising from SDCL 13-30-1 and the authority of the district to provide bus service set out in SDCL 13-29-1, taken together, reveals that if the district so desires all students may have access to bus service without regard to the distance involved. In 1967-68 A.G.R. 97 my predecessor stated:

It is my opinion that under the above-cited statutes that when a school district provides bus service by either owning, leasing, operating or contracting for bus service, that said district is obligated to pay the total cost of such bus service and no portion of said bus service cost may be apportioned to the children or parents of said district.

In addition, an administrative opinion issue by State Superintendent Gordon Dietrich on December 16, 1969, under the heading 'Charges to Students to Ride School Buses' stated:

No charges can be made to resident students to ride from their home to school and back or to attend a school activity within or outside the school district when they ride on a school district owned and operated school bus.

No charges can be made to resident students to ride from their home to school and back or to attend a school activity within or outside the school district when they ride on a school bus owned and operated by a private individual, corporation or association under contract with the school district.

While these administrative statements on the meaning of the statutes issued by state superintendents do not rise to the level of Attorney General Opinions and are probably not binding upon districts, nevertheless, they often provide the framework upon which statutes have been interpreted and on which school districts have ordered their affairs over a long period of time. It would be my inclination to follow the administrative interpretation of these statutes unless, as a legal matter, the statutes in question would not bear the interpretation placed upon them by the administrator.

In this case, it can be said, as a matter of law, that there is no direct authorization for school districts to charge students for the use of school buses for transportation to and from school or for transportation to school events under any circumstances. It is a well-established legal principle that administrative bodies have only the authority specifically granted to them by the legislature and such authority as is necessarily implied in order for the administrative body to carry out its mandated functions.

The authority to charge students to ride a school bus is not necessarily implied in order for a school district to carry out its statutorily mandated functions since the district may but is not required to provide bus transportation to students who live within two and one-half miles of their attendance center. See SDCL 13-30-1.

The answer to your question is no.

Respectfully submitted,

Mark V. Meierhenry
Attorney General