

## Opinion No. 55-6158

May 12, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. John D. Murphy, Assistant District Attorney, Second Judicial District, Albuquerque, New Mexico

In your letter of April 26, 1955, you ask our opinion with respect to several matters pertaining to Section 73-7-36 of the 1953 Compilation, as amended by Chapter 273, Laws of 1955.

The pertinent portion of the statute provides as follows:

"Provided further, that each county may furnish transportation from general funds, and not out of any funds or taxes raised or levied for educational purposes or appropriated in aid of the state public schools, to supplement the present school bus transportation system for the aid and benefit of all pupils attending school in compliance with the compulsory school attendance laws of the state of New Mexico, upon the same terms and in the same manner and over the same routes of travel as is provided for pupils attending the state public schools.

"The board of county commissioners of each county may contract with the busline operators for the transportation of pupils attending schools other than the state public schools, in compliance with the compulsory school attendance laws of the state of New Mexico in the same manner and over the same routes of travel as is provided for the pupils attending the state public schools; such transportation to be paid for with funds appropriated by each county for that purpose from the general funds of said county."

Your questions will be dealt with separately below:

"1. With what busline operators will the county commissioners be able to contract under the authority given them in the 1955 Amendment?"

The statute does not limit the class of busline operators with whom the county commissioners may contract for the transportation of pupils. There is nothing to prevent a duplication of routes from a legal standpoint. However, as a practical matter the requirement of the statute that such transportation be "in the same manner and over the same routes of travel as is provided for pupils attending the state public schools," will in most instances place such transportation in the hands of school bus operators.

"2. If they contract with a busline operator who has also contracted to carry pupils attending public schools, will the pupils attending schools other than the public schools be able to ride in the bus at the same time that those attending public schools ride,

provided that there is room to carry them, or will the operator of the busline have to make separate trips for the two classes of pupils?"

The statute does not prohibit the carrying of non-public school pupils in the same bus with public school pupils. It is obvious, of course, that this may not be done if the bus does not have sufficient capacity to carry both classes of pupils. It would appear from the wording of the section that such a practice was actually contemplated by the Legislature. In this connection, where the same busline operator is carrying both classes of students, the portion of Section 73-7-36 relating to compensation for school bus transportation should be construed to provide for payment for public school transportation on the basis of number of pupils transported rather than capacity of the school bus unit.

"3. Will the county commissioners be able to contract with schools other than public schools that own their own busses for the transportation of pupils attending such schools or other schools besides the public schools?"

Yes, providing that such transportation complies with the requirement that it be in the same manner and over the same routes as public school bus transportation.

"4. The 1951 Amendment provides that each county may furnish transportation from general funds, etc., to supplement the present school bus transportation system. Will you give me your opinion of what such supplemental aid shall consist, that is, should the pupils attending schools other than public schools pay on the same formula basis as is set up for pupils attending public schools? If not, of what, in your opinion, should this supplemental cost consist?"

In view of the portion of the first paragraph above quoted, providing that such transportation shall be on the same terms as is provided for pupils attending state public schools, it is our opinion that the cost should in no event exceed the amount which would be payable using the formula basis as set up for the public schools.

You further ask our opinion generally on other matters pertinent to these amendments. For your information I enclose herewith a copy of Attorney General's Opinion No. 5339, dated March 5, 1951, relative to the 1951 Amendment to the same section which originally authorized the transportation of non-public school children. This opinion held that transportation of such children not to be in violation of the Constitution of the United States. With that portion of the opinion we agree. Subsequent to that decision the Supreme Court of the State of New Mexico decided the case of **Zellers vs. Huff**, 55 N.M. 501, 236 Pac. 2d 949. Although this decision might be construed as prohibiting the use of school funds for this transportation, under Section 3, Article 12 of the Constitution of New Mexico, nothing therein, in our opinion, can be construed to render unconstitutional assistance from general county funds as provided by this Act.

By: W. R. Kegel

Assistant Attorney General