

Office of the Attorney General
State of North Dakota

Opinion No. 81-52

Date Issued: June 2, 1981

Requested by: Dr. Joseph Crawford
Superintendent of Public Instruction

--QUESTIONS PRESENTED--

I.

Whether a reorganized school district providing family transportation payments is entitled to be reimbursed by the State under the amendments to Chapter 15-40.1 of the North Dakota Century Code contained in House Bill 1496 effective July 1, 1981, for the full maximum of fifty percent of the payments to the families when the payments exceed the amount authorized in Section 15-34.2-03, N.D.C.C.

II.

Whether a school district is entitled to state reimbursement for payments to families providing transportation for students only part of the way from their residence to the school.

III.

Whether a school district, under the amendments to Chapter 15-40.1, N.D.C.C., effective July 1, 1981, can be reimbursed during the 1981-82 school year for transportation furnished during the 1980-81 school year.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a reorganized school district providing family transportation payments is entitled to fifty percent state reimbursement under the amendments to Chapter 15-40.1, N.D.C.C., contained in House Bill 1496 effective July 1, 1981, only to the extent of the maximum amount reimbursable for non-reorganized school districts in Section 15-34.2-03, N.D.C.C., which is ten cents per one-half mile per day in excess of two miles each way.

II.

It is my further opinion the school districts are entitled to state reimbursement for payments made to families who provide transportation to students from their residence only part of the way to school.

III.

It is my further opinion that a school district cannot be reimbursed during the 1981-82 school year for transportation furnished prior to July 1, 1981.

--ANALYSIS--

I.

Amendments to Chapter 50-40.1, N.D.C.C., contained in House Bill 1496 effective July 1, 1981, provide for the reimbursement from the foundation aid fund for school districts making family transportation payments. These amendments are to be codified as Sections 15-40.1-16.2 and 15-40.1-16.3, N.D.C.C.

Section 15-40.1-16.2, N.D.C.C., contains a statement of legislative intent that encourages school districts to provide transportation for their pupils as 'economically' as they can. Under existing law in Section 15-34.2-03, N.D.C.C., school districts have the authority to pay in their discretion to each family living more than two miles from a school a payment to assist in the transportation of the student by the family at a rate not to exceed ten cents per day for each one-half mile driven over two miles each way. The mileage is measured over the most convenient public course of travel. Reorganized districts are generally not bound by the payments or limitations of Section 15-34.2-03, N.D.C.C., pursuant to Section 15-53.1-24, N.D.C.C., which latter section was enacted prior to House Bill 1496.

Section 15-40.1-16.3, N.D.C.C., grants the Superintendent of Public Instruction the authority to make rules under which school districts may make reimbursement payments to persons transporting pupils under the family system of transportation. The Superintendent of Public Instruction is required to reimburse school districts from the foundation aid fund for payments made to families under this arrangement at a rate of fifty percent of the actual payment made by the district.

A reorganized school district pursuant to Chapter 15-53.1, N.D.C.C., is a public school district. House Bill 1496 does not limit reimbursement to only non-reorganized school districts. The minutes of the education and appropriation committees of the Forty-seventh Legislative Assembly do not indicate that reorganized districts are not to be included in the state reimbursement. The intent of Section 1 of House Bill 1496 would apply as well to reorganized districts.

The legislative intent of House Bill 1496 is also that the reimbursement is limited by the maximum authorized under Section 15-34.2-03, N.D.C.C. The minutes of the House Education and Appropriation Committees and the Senate Education Committee indicate that the ten cents per half mile maximum was used as the basis for determining the fiscal impact of House Bill 1496. The rate any district can be reimbursed by the State is limited under Section 15-34.2-03, N.D.C.C., to ten cents per one-half mile per day in excess of two miles each way over the most convenient public course of travel.

II.

Since it is the specific intent of the Legislature to encourage districts to provide for transportation for their pupils as 'economically' as possible, it follows then that a school district could determine that it could provide the most economical transportation of its students if it used a combination of the family system of transportation and transportation provided by the school district. The Superintendent of Public Instruction clearly has the authority to address this issue in the rules to be adopted. It is altogether possible that there will be a number of situations where it would be more economical to pay families to transport students from their homes to a certain point on the school bus route than it would be to divert the bus from its most economical route to pick up students who live at points that would be less economically well served by bus than direct transportation by the family.

In a previous opinion of this office written to Orrin B. Lovell, the Golden Valley County State's Attorney, on November 2, 1978, we held that for all practical purposes the family type transportation system and the school provided transportation system were mutually exclusive. Specifically in that opinion it was stated that in order for a family to receive transportation payments it must 'not receive transportation or any other compensation.' Under that opinion, a family that received any type of family transportation payment could not bring the pupil to a point on the bus route as the pupil then would receive transportation and hence that would be in conflict with the prior interpretation of this office concerning this matter. However, now that the Legislature has clearly stated its intent to encourage a school district to provide transportation to its pupils in the most economical way, it is my opinion that the Legislature has authorized school districts to use a system that is the most economical whether or not it involves a mutual use of both family type transportation and school provided transportation. Accordingly, as long as the use of a mutual family/public transportation method is the more economical to the school district, it may, under Section 15-34.2-03, N.D.C.C., reimburse families who provide transportation to students from their residences only part of the way to school. To the extent our previous opinion on the subject conflicts with this opinion, it is set aside.

III.

The amendments to Chapter 15-40.1, N.D.C.C., discussed herein as contained in House Bill 1496 did not contain an emergency clause and as such take effect on July 1, 1981, pursuant to Article IV, § 41, of the North Dakota Constitution. Section 1-02-10, N.D.C.C., provides that a statute is not retroactive unless it is so declared. The payments

that are authorized under these amendments cannot take place until after July 1, 1981, and hence no reimbursement payments can be made for transportation provided prior to July 1, 1981.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Robert O. Wefald
Attorney General