

**OPINION
46-121**

September 13, 1946 (OPINION)

EDUCATION

RE: School Boards May Not Pay Transportation to Parochial Schools

Your letter of September 12 addressed to the Attorney General has been referred to the undersigned for attention and reply.

You state that Taylor Special School District is not operating any busses this year, but expects the parents to make their own arrangements to bring the children to school. You then pay the parents on the per pupil basis.

Richardton has a bus which comes right by one of your school patrons. He lives six miles from the Taylor School but desires to have his children transported to St. Mary's School, Richardton, since the bus drives by his place and the school (Richardton Parochial) is closer to his farm than the Taylor School. You ask whether you are legally permitted to pay this patron the customary \$10 allowed him for bringing his children to the public schools.

Section 152 of the State Constitution provides that no money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school. Section 147 of the Constitution provides that the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the State of North Dakota and free from sectarian control.

The funds out of which you propose to pay this patron to transport his children to a parochial school is, of course, raised by taxation and is, therefore, public money. If you pay this money to a patron for transporting his children to a parochial school, you are paying out public tax money for a purpose not contemplated by the Constitution. When a school board pays transportation to a patron, it is on the assumption that such patron transports his children to the public schools established under authority of the Constitution and the statutes of the state. If such money were paid to the patron for transporting his children to a parochial school, it would be a diversion of public moneys for a purpose prohibited by the Constitution and the statutes of the state.

You state that the proposed plan would be a good business proposition since the district cannot afford to pay for busses under the present tax base. That may be true, but even though a certain plan may seem like a good business proposition, it would not warrant a violation of the Constitution and statutes of our state.

NELS G. JOHNSON

Attorney General