

1979 WL 43098 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1979

***1 RE: School Bus Transportation on Glassy Mountain, Greenville County**

Mr. Ralph M. Hendrix
Director
Office of Transportation
South Carolina State Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Mr. Hendrix:

You have sought the opinion of this Office concerning the obligation of the State Department of Education to furnish school bus transportation to certain children residing with their family on Glassy Mountain in Greenville County. You stated the children in question live approximately six (6) miles from the nearest main road, and the mountain road to the childrens' home is impassable by school bus. Further, during the 1977-78 school year, the family was reimbursed at the rate of Twenty Dollars (\$20.00) per month to transport their children to and from the bus stop; however, during the 1978-79 school year the family refused to continue this arrangement and refused an offer of One Hundred Thirty-Five (\$135.00) per month to continue the arrangement.

The opinion of this Office is that the State Department of Education has discharged its obligation pursuant to State law, regarding school bus transportation for students enrolled in the state's free public school system. While [Art. XI, § 3, Constitution of South Carolina](#), mandates the General Assembly to provide for the maintenance and support of a system of free public schools, that provision does not guarantee free public transportation to and from a public school house. South Carolina's provision for transportation of school children is based solely on enactment of the General Assembly and is nowhere found in the organic law of this state.

Control and management of all school bus transportation in this state is vested in the State Board of Education. [§ 59-67-410, Code of Laws of South Carolina](#), 1976. Further, [§ 59-67-420](#), as amended, describes the extent of transportation or state aid to be provided through the State Board of Education to transport any child to or from school. That section establishes a general policy that the State Board of Education is under no obligation to transport children to and from school who live within one and one-half miles of such school. While the state's obligation is stated in a negative manner, the legislative intent of [§ 59-67-420](#), as amended, is clear to the extent that the state assumes the general obligation to provide for transportation of all students within a school district living more than one and one-half miles from the school a child attends. Further, that section does not specify a particular mode or scheme of transportation; rather, the statute merely mandates that the state will bear the costs of required transportation.

Section 59-67-420, as amended, establishes general policy, but a more limited and specific statute, [§ 59-67-460](#), appears directly applicable to the present situation. That section states as follows:

Any county board of education may at any time contract for any part or all of its transportation services with private individuals or contractors for the furnishing of such services. In any such instance the county board of education shall execute the contracts. The county board shall be responsible for the payment of all sums due under contracts so entered into and shall receive aid from the state for pupils thus transported only on the basis of the average per pupil operating cost of State-owned equipment for the current year as determined by the State Board of Education.

*2 The Board may enter into agreements with county boards of education whereby pupils living in isolated areas may be transported by special arrangements when such transportation can be provided at lower cost than by operating cost then by operating a regular bus route.

The apparent intention of the General Assembly in enacting this section was to relieve school districts and the State Board of Education of the necessity of transporting every eligible school child via a publicly-owned school bus. The second paragraph of the above-quoted statute provides the State Board of Education specific authority to provide other 'special arrangements' for transportation when pupils living in isolated areas can be more cheaply transported by means other than a regular school bus route.

The meaning of § 59-67-460 has never been interpreted or construed by our State Supreme Court; therefore, resort to cases in other jurisdictions is necessary in order to aid in determining the Board's specific authority. The case of [State vs. Grand Coulee Dam School District No. 301](#), 85 Wash. 2d 556, 536 P. 2d 615 (1975), is particularly interesting. In that case the Supreme Court of Washington found it reasonable and within the discretion of school officials to offer the parents of school children the maximum amount it would cost the school district to transport a student on the most expensive bus run, in lieu of sending a publicly-owned school bus to the student's home. In the cited case, the school children also lived approximately six (6) miles from the nearest bus stop, along a road too dangerous for a school bus to travel. The statutory authority relied upon in that case was not appreciably different from South Carolina's; however, there the school district relied on a rule promulgated by the Superintendent of Public Instruction allowing payments to families in lieu of school bus transportation. While the South Carolina State Board Education has not promulgated such a rule, § 59-67-460 specifically authorizes the Board to make 'special arrangements' for the transportation of pupils living in isolated areas.

You have informed me that the average cost of transportation per student in the State of South Carolina last year was \$78.62 per year, which figure includes cost of buses, maintenance, driver's salaries, and insurance. During 1977-78, the family in question was reimbursed at the rate of \$20.00 per month to transport their children to the bus stop, and as stated previously, the State Department of Education has offered the family the sum of \$135.00 per month to transport their children to the main bus route. Therefore, the Department's offer far exceeds the average per pupil cost of transportation in this state, and based upon such offer, the opinion of this Office is that the State Board of Education has fulfilled its obligation to provide transportation as required by statute.

With kind regards,
Sincerely,

Paul S. League
Assistant Attorney General

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