

Opinion No. 52-5495

February 13, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Raymond Huff, Chairman and Tom Wiley, Secretary State Board of Education
Santa Fe, New Mexico

{*210} Recently you requested an opinion from this office concerning the legality of transportation of children to private schools. With the enactment of the amendment to Section 55-634 NMSA, (Ch. 65, Laws of 1951) in view, you ask whether the transportation of children to private schools would be legal under certain regulations, which you outline.

The amendment to § 55-634 which concerns us here reads 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 schools 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 first of the regulations which you outline reads as follows:

1. "That non-public school children may ride the public school bus in operation in your school district over a regularly established bus route, provided there is sufficient room in the bus for them to ride and not overcrowd public school pupils."

This type of transportation is permissible only if the county defrays, out of its general funds, the additional expense occasioned by the transportation of non-public pupils, attending such schools by virtue of the compulsory school attendance law. This view is in conformity with § 55-634 NMSA, as amended, (see supra). With respect to parochial school children, such transportation without the county defraying the additional cost would, in my opinion, be violative of paragraph 2 under Count II of the decree entered by Judge Hensley in the case of **Zellers, et al v. Huff, et al**. This portion of the decree states:

"That the defendants named and designated in paragraph 12 of this judgment relating to the first cause of action be and each of them are hereby permanently enjoined and restrained from permitting, allowing or consenting to the transportation of pupils attending parochial schools by transportation furnished by the State of New Mexico in connection with the furnishing of school bus transportation."

The second regulation you mention is as follows:

2. "If a double-back is necessary or an extension of the present bus route be made to accommodate these pupils, the cost of this operation will be paid from the county general fund and not from school monies."

This regulation, as it pertains to "double-backs," is in my opinion entirely proper and in conformity with § 55-634 and Judge Hensley's decree. However, in my further {211} opinion, § 55-634 precludes the extension of an established bus route to accommodate private school pupils, even if the county should provide for the additional cost occasioned thereby.

The third regulation you outline provides:

3. "If an extra bus is put on by the private school, this bus must conform to all bus standards and specifications. The drivers of these vehicles shall meet all regulations governing school transportation."

This regulation is likewise proper and conforms to both § 55-634, as amended, and the spirit of § 55-1801 NMSA.

The fourth of your regulations reads as follows:

4. "Where non-public school pupils ride public school buses they shall be subject to the same supervision and regulations as the public school pupils."

This regulation likewise properly conforms to the intendment of § 55-634.

The fifth and last of your proposed regulations states as follows:

5. "Where the bus capacity will not permit the transportation of non-public school pupils, and the county general fund is not sufficient to take care of increased transportation due to these pupils riding, said pupils may not receive transportation service."

Concerning this regulation, as was stated in the comment on Regulation No. 1, no child may be transported to a private school on a public school bus unless the county defrays the additional cost occasioned thereby. Therefore, in all cases where the county does not defray, or provide for, the cost of the transportation of these pupils, they shall not receive transportation service.

I trust that this opinion answers your questions on this subject.