

Opinion No. 66-134

December 8, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Clay Buchanan, Director, New Mexico Legislative Council, State Capitol, Room 201, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Where regular school bus transportation for students is impractical, may a local school board reimburse a parent or guardian on the basis of actual cost or on the basis of a fixed rate for actual mileage traveled in transporting students to and from school, if approval is granted by the State Transportation Director and the State Board of Education?

2. Where regular school bus transportation for students is impractical, may the State Transportation Director with the approval of the State Board of Education establish a schedule for the reimbursement of parents and guardians based on actual cost or on a fixed rate for actual mileage traveled in the transportation of students to and from school?

CONCLUSIONS

1. See analysis.
2. See analysis.

OPINION

{*177} ANALYSIS

The 1966 General Appropriations Act (Laws 1966, Chapter 66, Section 11) appropriated \$ 6,800,000 to the School Equalization Fund for transportation distribution.

Paragraph 3 of Section 11 provides as follows:

"3. Transportation Distribution. Of the total amount appropriated for this distribution the sum of one hundred fifty thousand dollars (\$ 150,000) shall be reserved as an emergency fund to be distributed only upon express approval of the state board of education. The remaining amount of the appropriation **shall be distributed in accordance with the provisions of Chapter 266, Laws 1965**, except that no school

district shall receive funds from this distribution in excess of its actual transportation costs." (Emphasis added.)

Paragraph E of Section 73-19-8, N.M.S.A., 1953 Compilation (P.S.) is a portion of Laws of 1965, Chapter 266, referred to above, and provides as follows:

"E. A local board of education may, with the approval of the state transportation director, provide for per capita or per mile reimbursement to a parent or a guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparsity of population. A schedule relating to the reimbursement of parents and guardians shall be established by the state transportation director with the consent and approval of the state board of public education."

We believe this statute contemplates that a local school board will make the initial determination as to need for payment to parents and guardians since "regular school bus transportation is impractical because {**178*} of distances, road conditions or sparsity of population".

The transportation director will then review the proposed action of the local board and see if per capita or per mile reimbursement is factually warranted. If so, he will approve the local board's determination.

The reimbursement schedule provision to be established by the state transportation director with the consent and approval of the state board of education is apparently designed to insure a maximum amount of uniformity in payments for this type of transportation in school districts where similar conditions prevail.