

Opinion No. [29-94]

December 28, 1929

BY: M. A. OTERO, JR., Attorney General

TO: Mr. George A. Graham, Superintendent, Reserve Union High School, Reserve, New Mexico.

SCHOOLS -- In re transporting pupils.

OPINION

I have your favor of the 12th inst. desiring my opinion on the following statement of fact:

"The High School building is situated in Reserve, which is in District 18. There is a High School bus line running to and from the High School Building and Lower Plaza, which is some 6 miles distant from Reserve and in District 43. The School bus passes thru Middle Plaza, which is within the 3 mile limit of the High School building, and also in District 17, which is not a part of the Union High School District. Districts 43 and 18 are parts of the Union High School District. The driver of the said school bus proposes to charge \$ 1.50 per month for all High School children boarding his bus from Middle town (Plaza) who are within the three mile limit and in a district not a part of the Union High School District. The Middle Plaza patrons of the High School object to this procedure on the grounds that:

1st. Transportation is paid for from Maintenance funds which is a charge on the taxpayers of the whole county, and must therefore serve all the persons along the route traveled without regard to the three mile limit.

2nd. That although it is true that a School transportation line may not be established within the three mile limit, it does not follow that after a line is established covering a greater distance than its service is not available to those along its route within the three mile limit.

3rd. That no objection has ever been made to the use of school equipment and direct charge material in the school by the authorities of said school by the children living and residing in a district not a part of the Union High School District."

In reply thereto, I beg to advise that the statute, section 1422 of the School Code, is a prohibitive statute only and prohibits any budget allowance for the transportation of pupils in any school district in this state unless there are eight pupils of school age to be transported, and no budget allowance shall be made for transportation of pupils residing within three miles of the school building. It in no way prohibits the use of school busses by pupils within three miles of the school building if no extra budget allowance or expense is caused by use of the busses by such pupils and if the busses and

equipment used, as described in your statement of facts set forth above, belong to the high school district, then it is a matter entirely for the said high school board to determine, whether the pupils within the three mile limit may use such busses. If the equipment so used is the property of the bus driver, and there is no contract with the high school board which provides for his carrying these pupils inside of the three mile limit, then he could do as he pleases about charging them for transportation.

You do not reveal in your letter just who is the owner of the bus equipment, and the terms of the contract with the driver, but I believe the above statement will give you the desired information.