

**OPINION
62-215**

January 2, 1962 (OPINION)

SCHOOL DISTRICTS

RE: Transportation - Pupils Attending Nonpublic Schools

This is in reply to your letter of December 14, 1961, in which you enclose a letter from the Rugby Public Schools under date of March 18, 1960.

This letter concerns transportation for children who do not attend public schools. You ask for our opinion relative to the transportation plan of Rugby wherein children are to be taken in public schoolbuses to the nonpublic school in Rugby. The plan is set forth at length in the enclosure with your letter.

This office has previously advised that while the transportation of students by a public school district to nonpublic schools is not necessarily a violation of the State Constitution, (see *Everson v. Board of Education*, 330 U.S. 1, 91 L. ed. 711) the school district is not authorized by the statutes of this state to expend public moneys for the transportation of students attending nonpublic schools. We have also advised that where students attending nonpublic schools are transported on public schoolbuses, incidentally to the transportation of public school students, and where no public moneys are expended for transportation of such students, it appeared there would be no violation of state law.

Whether or not there is an expenditure of public funds in the process of transporting students attending schools not operated by the school district is essentially a question of fact to be determined by the board of education of the school district. It is not possible for this office to determine this question of fact without a complete examination of the transportation costs of a given school district.

Such is not the function of this office. Since the costs of transportation in any given school district may vary, we believe it is obvious that the board of education of the school district would have the readiest access to the pertinent facts concerning the cost of transporting students in their district.

If the board of education of the Rugby School District has determined that the above plan would not cause an expenditure of public funds for the transportation of students to nonpublic schools, and if, in fact, no public funds would be expended in the transportation of such students, the above plan would not be violation of state law.

It is our opinion that any school district adopting a plan of transportation for students to nonpublic schools must determine if such plan will result in an expenditure of public funds. If the plan does result in an expenditure of public funds the plan would be invalid for it would constitute an unauthorized expenditure of public funds. If the plan does not result in an expenditure of public funds we believe the plan would not violate the laws of this state. As stated above, however, the determination of whether public funds are

or are not being expended under any specific plan is a determination which must be made by the board of education of the school district.

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Attorney General