



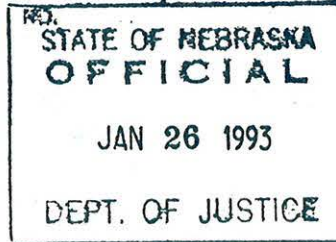
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DATE: January 25, 1993

SUBJECT: School Transportation. Subject to certain conditions, public school boards may authorize the use of buses belonging to the school district for the transportation of public school students to and from school who reside outside the school district.

REQUESTED BY: Joe Lutjeharms, Commissioner of Education
 Lincoln, Nebraska 68509

WRITTEN BY: Don Stenberg, Attorney General
 Harold Mosher, Senior Assistant Attorney General

The residency of the student body of a school district obviously includes, but is not necessarily limited to, students who reside within the territory under the jurisdiction of the school board. It may also include nonresident contract students, subject to the conditions stated in Neb. Rev. Stat. § 79-486 (Supp. 1992) and Neb. Rev. Stat. § 79-603 (Reissue 1987); nonresident elementary students, subject to the conditions stated in Neb. Rev. Stat. § 79-478 (Reissue 1987); nonresident high school students, subject to the conditions stated in Neb. Rev. Stat. §§ 79-494 to 79-4,106 (Reissue 1987), as amended; wards of the court, subject to the conditions stated in Neb. Rev. Stat. § 79-445 (Supp. 1992); nonresident special education students, subject to the conditions stated in Neb. Rev. Stat. § 79-3359 (Reissue 1987); and option students, subject to the conditions stated in Neb. Rev. Stat. §§ 79-3401 to 79-3418 (Supp. 1992). The terms and conditions upon which school districts may transport any of the above students to and from school depends upon statutory authorization and certain constitutional principles.

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You note that Neb. Rev. Stat. § 79-3410 (Supp. 1992) provides, in part, that "[a] school district may upon mutual agreement with the parent or legal guardian of an option student provide transportation to the option student." You then ask if the State Department of Education may liberally interpret this statute to allow school districts to transport option students to and from school (i.e. Nebraska students who have chosen to attend a Nebraska public school district other than his or her resident school district) for less than the costs they incur?

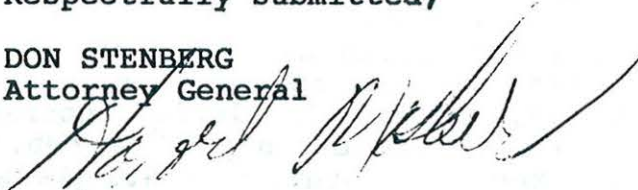
We think not. In Peterson v. Hancock, 155 Neb. 801, 817, 54 N.W.2d 85 (1952), the court stated:

" . . . 'A state cannot tax itself for the benefit of the people of another state. So the imposing of a tax on the municipality or part of the state, for the purpose of benefiting another municipality or part, violates the rule as to uniformity. No taxing district can be taxed for the exclusive benefit of another district.'"

It therefore seems clear that a school district may, upon mutual agreement with the parent or legal guardian of an option student, provide the option student with transportation to and from school provided it charges the parent or guardian of each option student so transported a fee which is sufficient to cover all additional costs the school district incurs in operating its school bus the extra distance to provide such transportation. No taxing district can be taxed for the exclusive benefit of another student.

Respectfully submitted,

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Approved:



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