

Therefore, it is my opinion that the transfer of bond proceeds derived by a school district from the sale of bonds issued for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites to the general operating fund of the district is illegal. School tax electors are without authority to vote such a transfer.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Powers of board of education.

Sale of bus transportation equipment.

Discontinuance of bus transportation.

The board of education of a third class school district, which determines that bus transportation equipment is no longer necessary for school purposes, is empowered to sell the same and give proper bills of sale or other instruments passing title thereto under Sec. 113 of Act 269, P.A. 1955.

The board of education of a third class school district is empowered under Sec. 121 of Act 269, P.A. 1955, to discontinue bus transportation without vote of the school electors.

No. 4139

March 22, 1963.

Hon. Carl O. Little
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion in answer to the following questions as they relate to the power of a board of education of a third class school district:

1. Does the board of education have authority to sell transportation equipment?
2. Does the board of education have authority to eliminate the transportation system?

1. Act No. 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

The legislature has made provision for school districts of the third class in Chapter 4, Part 1 of the School Code of 1955.

Sec. 113 of the School Code of 1955 empowers the board of education of any school district of the third class, in part as follows:

“To sell, exchange or lease * * * any real or personal property of the district which is no longer *required* thereby for school purposes, and to give proper deeds, bills of sale or other instruments passing title to the same.” (Emphasis supplied)

Consideration must also be given to Sec. 121 of the School Code of 1955,

which in enumerating additional powers of the board of education of a third class school district specifies as follows:

"To provide adequate facilities for transportation within the district of pupils from and to their homes when the board deems it advisable."

This portion of the school code also confers authority upon a board of education of a third class school district to pay for transportation of resident pupils to schools in other districts even though the same grades are maintained within the district.

Under Sec. 113 of the School Code, supra, the legislature has expressly authorized the board of education of a third class school district to sell personal property which is no longer required for school purposes.

The Michigan Supreme Court in *The Flint & Pere Marquette Railroad Company v. The Detroit & Bay City Railroad Company, et al*, 64 Mich. 350, (1887), found that the word "required" was synonymous with the word "necessary." *City of Waukegan v. Stanczak* (Ill.) 129 N.E. 2d 751 (1955).

The statute contemplates that the board of education shall make a judgment whether any real or personal property of the district, including bus transportation equipment, is no longer necessary for school purposes. Once it is determined that such personal property is needed no longer, the board of education is free to sell the same.

Therefore, it is the opinion of the Attorney General that if the board of education of a third class school district determines that bus transportation equipment is no longer necessary, it is empowered under Sec. 113 of the School Code of 1955, supra, to sell the same and to give proper bills of sale or other instruments passing title thereto.

2. Sec. 121 of the School Code of 1955 authorizes the board of education of a third class school district to provide adequate facilities for transportation within the district of pupils from and to their homes when the board determines that it should be done.

Unlike school districts of the fourth class where Sec. 68 of the School Code of 1955 empowers the school electors to authorize bus transportation and to discontinue bus transportation only upon vote of the school electors, the legislature has in Sec. 121 reposed this authority solely in the board of education of a third class school district.

The power to provide the transportation must by implication also include the power to discontinue transportation.

Therefore, it is my opinion that the board of education of a school district of a third class is empowered without vote of the school electors to discontinue bus transportation under Sec. 121 of the School Code of 1955.

FRANK K. KELLEY,
Attorney General.