



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 24, 2023

Elizabeth Lee Maron, Esq.
Attorney, Forest Municipal School District
1018 Highland Colony Parkway, Suite 800
Ridgeland, Mississippi 39157

Re: Transportation Incentive for School District Employees

Dear Ms. Maron:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, the Forest Municipal School District (“District”) employs staff who travel long distances from their homes to teach in the District each day. The District is concerned that if travel costs are not addressed, the District will likely lose staff to school locations closer to their homes. The Board of Trustees of the District is reviewing a program offering transportation using school buses for District employees who live some distance away from the District—in Brandon, Mississippi, for example—but teach in Forest, Mississippi. Pursuant to a subsequent conversation, we understand that your request is limited to only using public school buses belonging to the District for such transportation.

Questions Presented

1. May the District use District buses to transport employees to and from work who live some distance away from or outside of the District boundaries?
2. Is the offer of transportation using District buses a proper incentive in light of Article 4, Section 96 of the Mississippi Constitution?
3. If transportation is an appropriate incentive, may the District fulfill the proposal of a transportation incentive as described above to District employees even though District employees have signed their contracts?
4. If the answer to Question 3 is no, may the District provide this incentive as consideration prior to the District employees signing their contracts?

5. Based on a prior 1983 Attorney General's Opinion placing the responsibility for determining who may enter a public school bus on the local school board, does the Board have the authority to establish a route from Forest, Mississippi to a fixed point, such as Brandon, Mississippi, for the purpose of providing transportation to employees who travel to teach or work in the District?

Brief Response

1. There is no statutory authority to use public school buses to transport employees between their homes and the schools where they work as described in your request.
2. No. Because there is no authority for school buses to be used in the manner described in your request, such transportation would not be considered a proper incentive under Article 4, Section 96 of the Mississippi Constitution.
3. This question is rendered moot by Responses 1 and 2.
4. No. See Responses 1 and 2.
5. A school board does not have the authority to establish a school bus route from Forest, Mississippi to Brandon, Mississippi, for example, for the purpose of providing transportation to employees who travel to teach or work in the District.

Applicable Law and Discussion

Pursuant to Section 37-41-3, students who live one mile or more from their school are entitled to transportation from home to school and from school to home. MS AG Op., *Carnathan* at *1 (Nov. 14, 1997). With limited exceptions, school buses may only be used for the transportation of public-school students in accordance with rules and regulations promulgated by the State Board of Education. Miss. Code Ann. § 37-41-1. "In the development of route plans, economy shall be a prime consideration. There shall be no duplication of routes except in circumstances where it is totally unavoidable." Miss. Code Ann. § 37-41-3.

In addition to transporting students who are entitled to transportation from home to school and from school to home, Title 37, Chapter 41 provides limited circumstances in which school buses may be used for additional purposes. *See* Miss. Code Ann. §§ 37-41-3 (allowing transportation of junior college students on established bus routes) and 37-41-27 (entitled "Additional uses for school buses; special events; jury functions; emergencies; military air show transportation"). Otherwise, it is a misdemeanor for a school bus to be used "for any purpose other than one in connection with the school." Miss. Code Ann. § 37-41-45. The transportation of teachers outside of specific school-related events is not provided for nor considered in Title 37. Thus, this office finds no authority for a school district to use public school buses to transport employees who live a significant distance away as described in your request.

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Your fifth question cites a 1983 opinion that addresses whether the school district could provide transportation to teachers and other school district employees on established bus routes on a space available basis. MS AG Op., *Breland* (Jan. 24, 1983). However, the facts in *Breland* are distinguishable from your questions: *Breland* does not involve the District's authority to transport teachers on District buses from outside of the District limits. Further, *Breland* cites Section 37-41-1(m), which authorized the state board of education to promulgate rules and regulations for "[t]he method by which, and the circumstances in which, any individual who is not a student scheduled to be a passenger upon that particular bus, a member of the public school administration or faculty, or a law enforcement official may obtain entry upon said buses." *Breland* at *2 (quoting Miss. Code Ann. § 37-41-1(m) (Supp. 1982)) (internal quotations omitted). The opinion ultimately found that any rule promulgated by the state department of education under the purview of Section 37-41-1(m) placed "the responsibility for determining who may enter a public school bus upon the local school boards." *Breland* at *2. However, Section 37-41-1(m) has since been repealed. It is the opinion of this office that the 1983 *Breland* opinion provides no authority for the District to establish a bus route from Forest, Mississippi to Brandon, Mississippi, for example, to provide transportation to teachers who work in the District.

Because this office finds no authority to use public school buses to transport employees in the manner described in your request, such transportation would not be considered a proper incentive under Article 4, Section 96 of the Mississippi Constitution.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard
Special Assistant Attorney General