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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Hobson Manasco, Jr.
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Roads, Highways and Bridges -
Private Property - Transportation
Services - Individuals with
Disabilities Act - School Buses -

The Winston County Commission may maintain a private road for school buses to transport special education students entitled to transportation as a related service under the Individuals with Disabilities Education Act if the Winston County Board of Education pays for the maintenance.

Dear Mr. Manasco:

This opinion of the Attorney General is issued in response to your request on behalf of the Winston County Commission.

QUESTION

May the Winston County Commission provide road repairs and maintenance for a road to a child care center located on private property, which has handicapped children, to transport them to school by public school bus?

FACTS AND ANALYSIS

The federal Individuals with Disabilities Act ("IDEA") was enacted to "assure that all children with disabilities have available to them . . . a

free and appropriate education which emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C.S. § 1400(c) (1998). Included in “related services” is transportation. 20 U.S.C.S. § 1401(a)(17) (1998).

“This Office has determined that, generally, a county cannot maintain private roads, although the roads are used as school bus routes, unless the roads have been dedicated to and accepted by the county, or acquired by prescription for public use.” Opinion of the Attorney General to the Honorable William E. Shinn, Jr., Morgan County Attorney, dated March 19, 1999, A.G. No. 99-00145. Nonetheless, opinions of this Office addressing this issue have concluded that the county commissions and boards of education may cooperate to fulfill the mandate of the IDEA that a special education student receive adequate transportation to and from school. Opinion of the Attorney General to the Honorable Larry Teel, Chairman, Elmore County Board of Education, dated January 7, 2004, A.G. No. 2004-056; Opinion of the Attorney General to the Honorable Hobson Manasco, Jr., Winston County Attorney, dated September 19, 2000, A.G. No. 2000-235; A.G. No. 99-00145.

Of the opinions most closely on point, the *Shinn* opinion stated that a school board may pay the county commission to repair a private road to transport special education students entitled to transportation as a related service from their residences to school. *Id.* at 3. In addition, as stated in your request, this Office issued a prior opinion to you concluding that, because special education students were educated at a school for the Association for Retarded Citizens on behalf of the Winston County Board of Education, the Association could pay the Commission to repair a private driveway to transport a special education student to the school. A.G. No. 2004-056 at 3. Therefore, the Winston County Commission may maintain a private road for school buses to transport special education students from a child care center to school provided they are entitled to transportation as a related service and the Winston County Board of Education pays for the maintenance.

CONCLUSION

The Winston County Commission may maintain a private road for school buses to transport special education students entitled to transportation as a related service under the IDEA if the Winston County Board of Education pays for the maintenance.

Honorable Hobson Manasco, Jr.
Page 3

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in black ink that reads "Carol Jean Smith". The signature is written in a cursive, flowing style.

CAROL JEAN SMITH
Chief, Opinions Division

TK/GWB
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