

**Schools, Maintenance Of—School Board, Discretionary Powers Of.**

A school board is vested with a certain amount of discretion in determining whether a school should be maintained in a remote part of a school district.

Nov. 4, 1919.

Mr. T. H. MacDonald,  
County Attorney,  
Kalispell, Montana.

Dear Sir:

You have submitted to me the question of whether the school board can be compelled to furnish a teacher for a school house located in an end of the district where the children would have to go from three to six miles to attend the school in the other end of the district, or in lieu thereof, provide transportation.

Officers of school districts are public officers, and like other public officers their powers and duties are generally determined by statute. The primary purpose of a school house is to provide school facilities for the children within the district.

Under Section 508 of the General School Laws it is made the duty of the board (1) to employ or discharge teachers, (2) to provide for school furniture and everything needed in the school house; manifestly everything needed to conduct school. To allow pupils residing in other districts to attend school in the district to which they have charge if, in their judgment, there is sufficient room. They may close their school and send pupils of the district to another district, and for that purpose are empowered to spend any money belonging to their district for the purpose of paying for the transportation of pupils from their district to such other district or districts and for the purpose of paying their tuition and whenever they deem it for the best interest of the district, they may expend any money belonging to the district for the purpose of paying for the transportation of pupils from their homes to the public school maintained in the district.

A fair construction to be given these various provisions is that the school board is bound to use its utmost endeavor in an honest attempt to give to each child in the district as near an equal chance of school facilities as the circumstances of each case will permit. It is impossible to locate the school in such a position that it will be equally advantageous to all, for this reason the provision is made for transportation or transfer to another district. In carrying out their obligation the board is vested with certain discretion. This, of course, must not be arbitrary or capricious or oppressive but must be a sound and legal discretion. For the control of matters within their discretion I know of no remedy at law.

I am of the opinion that under Section 608 the board could be compelled to maintain school for at least three months if there are sufficient children residing not less than five miles from the established school providing that in the judgment of the County Superintendent there is suf-

ficient funds to support such school. It may be the board would prefer to furnish transportation to children rather than expend the money to maintain a school as therein provided.

Respectfully,

S. C. FORD, .

Attorney General.