

School Trustees—Authority to Pay the Cost of Board and Room in Lieu of Transportation.

The Trustees of a School Board have no authority to pay for the board and lodging of pupils attending outside of the district in lieu of paying for transportation.

W. L. Hyde, Esq.,
County Attorney,
Superior, Montana.

My dear Mr. Hyde:

You have requested an opinion from this office upon the following question:

May the trustees of a school district, having pupils under the age of twenty-one years and qualified to attend high school, and such district having no high school, pay out of the funds of such district, money for the board and rooming of such pupils attending high school in an adjoining district in the county in lieu of the payment of transportation (as provided by Ch. 76 of the Laws of 1913, sec. 507, Subdivision 3), where transportation would be impracticable and would considerably exceed the cost of such board and rooming?

It is fundamental that School Boards, being creatures of the statute, may exercise only the powers expressly conferred upon them by statute, or such as are necessarily implied in the exercise of those expressly conferred. It has also been repeatedly held that the powers of School Boards are to be strictly construed.

In *Bean v. Lyons*, 37 Mont. 354, the Supreme Court of Montana, speaking through Chief Justice Brantly, used the following language:

"It (Section 1797, Political Code of 1895, as amended by Session Laws of 1897, page 130) must, therefore, be regarded, not only as a grant of power to such boards, but also as a limitation upon their powers, both as to its extent and as to its mode of exercise. That is the rule of construction applicable to all statutes granting and defining the powers of such municipal or quasi-municipal bodies."

The powers of School Boards and their limitations are discussed also in the following opinions of the Attorneys General: Vol. 6, p. 39; Vol. 7, p. 163; Vol. 4, pp. 302, 303, and Vol. 4, p. 197.

The statute relating to transportation of pupils is Subdivision 3 of Section 507 of Chapter 76 of the Laws of 1913, reading as follows:

"That the trustees of any school district in the State of Montana, when they shall deem it for the best interest of all pupils residing in such district, may close their school and send pupils of the district to another district and for such purpose are hereby empowered to expend any moneys 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. Whenever the trustees of any school district in the State of Montana deem it for the best interest of such district and the pupils residing therein they may expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district."

While the text of the above section perhaps has no relation to the conclusion that board and room are not transportation, nevertheless it is quoted for the purpose of showing that it contains no authority whatever for the expenditure for any other purpose of any funds that might have been used for transportation. Thus the only question to be resolved is whether, because of the advantage to the district, moneys that could legally be expended for one purpose may be diverted to an entirely different purpose. Under the rule stated in *Bean v. Lyons*, supra, and the general rule that the powers of School Boards are limited to those expressly given or necessarily implied, it is not possible to construe the authority to expend money for transportation into an authority to expend it for board and room, the latter being in no sense incidental or necessary to transporting pupils. The disbursement of the moneys for such purposes would conflict with Ch. 76 of the Laws of 1913 and Sec. 2004 of the School Laws as amended by Chap. 96 of the Laws of 1919.

Subdivision 9 of Section 302 of Chapter 76 of the Laws of 1913 contains the following provision:

"Such warrant shall show for what purpose the money is required * * *

Section 2004 of the School Laws, as amended by Chapter 196 of the Laws of 1919, reads as follows:

"County School moneys may be used by the County Superintendent and trustees for the various purposes, as authorized and provided in this Act, and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than nine months' school, on a vote of the qualified electors of said district, may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage or barn. If any school money shall be paid by authority of the Board of Trustees for any purpose not authorized by this Chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or if he shall refuse to bring the same, a suit may be brought by any taxpaying elector in the district."

In *Pfeiffer v. Reno*, 29 Pa. Co. Ct. Reports, 145, where the statute permitted transportation of pupils at the expense of the district in certain cases, it was held that the payment of a pupil's board was illegal, the court saying:

"The law does not authorize the school directors to pay the board of pupils. It merely authorizes them to pay transportation to other schools."

It is, therefore, my opinion that, however advantageous it might be to pay for the board and lodging of pupils attending High Schools outside of their districts in lieu of paying for transportation to such schools, the statutes do not give the Board authority to do so, and that until further legislation is enacted authorizing the same, such expenditure by School Boards would be illegal.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.