

Opinion No. 358**Schools — Transfers — Tuition — Private Schools — Parochial Schools**

HELD: A school district of this state may not pay tuition of pupils attending private or parochial schools.

October 9, 1933.

You have requested an opinion on the following matter: "I have had a few applications for transfer of high school apportionment from pupils of this county who wish to attend accredited private and parochial schools in the state of Montana. As I understand the law (Chapter 3, Section 81, page 139 of the 1931 Montana laws) these schools would be eligible to receive the amount allowed any credited high school. Is this correct?"

The statute to which you refer is part of Chapter 148, Laws of 1931, which is an act relating to the public school system of the state. The public school districts of Montana are political subdivisions of the state. (*State v. Meyers*, 65 Mont. 124, 210 Pac. 1064; *McNair v. School District No. 1, Cascade County*, 87 Mont. 423, 288 Pac. 188; 69 A. L. R. 866.)

Being subdivisions of the state, any statutory provision relating to the public schools necessarily applies and is restricted to such schools to the exclusion of private and parochial schools. The state assumes no more authority or control over the latter class of schools than it does over any other private business or enterprise. "Management of public schools is a state affair, districts being state agencies, and school boards act in a governmental capacity." (*Cloverdale Union High School District v. Peters*, 264 Pac. 273, 88 Cal. App. 731.) The right of any school to share in the distribution of public school funds is limited to the manner provided by statute. (*Board of Education of the City and County of San Francisco v. Hyatt*, 93 Pac. 117, 152 Cal. 515; *Smith v. Donahue* 195 N. Y. S. 715; *Williams v. Board*, 191 S. W. 507, 173 Ky. 708, L. R. A. 1917D 453.)

It is clearly obvious that the statutes of this state relating to the public schools apply only to those school districts and institutions which are political subdivisions of the state, and do not relate to private or parochial schools.