

Opinion No. 293.

Schools and School Districts—Transportation — Contracts — Term of Contract—Trustees.

HELD: School Trustees, within their sound discretion, may enter into a three-year bus transportation contract.

June 27, 1938.

Mr. Harold K. Anderson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Anderson:

You have submitted the following question: "Can a contract for bus transportation be entered into by a

school board for longer than one year? In other words, can the present school board bind future school boards by entering into a contract for transportation for, say three years?" Section 1010 provides:

"* * * however, that in the letting of the contract for the transportation of more than five (5) pupils on a single transportation route, the trustees of school districts shall advertise for bids for transportation of such pupils in one issue of the county paper having the largest circulation in such district at least fifteen (15) days prior to the letting of contract, and in the event that there is no newspaper published in the county, then three (3) notices calling for bids shall be posted in three (3) separate and conspicuous places in the district and provided that the contract for such transportation shall be let to the lowest responsible bidder and suitable bond be furnished by contractor, and provided that the trustees of any district shall not, except where there is rail transportation or where it is necessary to transport pupils for special instruction from school to school, be allowed to expend any of the district's money for transportation of pupils who live nearer than two and one-half miles from the limits of an incorporated city in which the child attends school or nearer than three (3) miles from the school the child attends, unless any child resides on an established consolidated route, provided, however, that this limitation as to mileage shall not apply to districts of the first or second class. When they deem it for the best interest of such district and the pupils residing therein, that any of such pupils should be sent to a school in their own or some other district, they must expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupils from their homes to the public school or schools of such district or for their board, rent or tuition while actually attending such school, provided that if there are five (5) pupils or less, then the following schedule shall apply:"

A School Board, like any other corporate entity, is a continuing body, although the personnel may change

from time to time. Legal obligations entered into by the district are not terminated by reason of change in membership of Board of Trustees. No statutory restrictions exist, express or implied, limiting the term the Board may enter into a school bus transportation contract. 24 R. C. L., page 579, provides:

"In the absence of an express or implied statutory limitation, a school board may enter into a contract to employ a teacher or any proper officer for a term extending beyond that of the board itself, and such contract if made in good faith and without fraudulent collusion binds the succeeding board. It has even been held that under proper circumstances a board may contract for the services of an employee to commence at a time subsequent to the end of the term of one or more of their number and subsequent to the reorganization of the board as a whole. The fact that the purpose of the contract is to forestall the action of the succeeding board may not of itself render the contract void. But a hiring for an unusual time is strong evidence of fraud and collusion, which, if present, would invalidate the contract. Of course any statutory implication that the powers of the board are limited to the current term would invalidate contracts for a term extending beyond that of the board." 56 C. J. 485, School District No. 54 against Garrison, 119 S. W. 275.

The length of time such contracts may operate for must be a reasonable time, and whether or not such time is a reasonable time is to be determined in accordance with all of the facts existing in each particular case, and within the sound discretion of the Board. The School Board must consider the different factors likely to arise in each instance, such as the possibility of the abandonment of the district, the increase or decrease of enrollment, the character of the service required, the available funds which may be used for such purposes, and other similar items. If a longer term contract is possible to be secured by the operator of the bus, it would appear that he would be in a better position to procure a higher and more expensive standard of equipment. Under ordi-

nary conditions, a three-year term contract for school bus transportation is not an unreasonable length of time for a school board to enter into a contract for. Therefore, it is my opinion, in answer to your question, that the school board can bind future school boards by entering into a contract, for transportation, for a period of three years.