

No. 137

HIGH SCHOOL STUDENTS—COUNTY SUPERINTENDENT—COUNTY TREASURER—STUDENTS (ELIGIBLE) IN STATE INSTITUTIONS

Held: Where proper application is made by parent or guardian, or where pupils is in State Institution, it is mandatory for County Superintendent to authorize same and to take same into consideration in budget and to notify County Treasurer. County Treasurer must transfer funds.

June 6, 1941.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have asked for my opinion as to the proper procedure in transferring high school funds, where high school students who are residents of other counties attend high school in Madison County, and especially in regard to students who are at present in the State Orphans' Home at Twin Bridges who attend the Twin Bridges High School.

I find the answer to your inquiry fully and clearly set forth in Chapter 217 of the Laws of 1939. Section 4 of said Chapter is as follows:

"Section 4. That Section 1262.81, Revised Codes of Montana, 1935, be, and is hereby amended to read as follows:

'1262.81. **Attendance Outside of County of Pupil's Residence—Transfer of Apportionments.** The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence, when proper application has been made by the parent or guardian on or before September 1. No payment shall be made for attendance in another state except where such attendance is in a public elementary or secondary school in a county adjacent to the county of the student's residence.

'After the budget for high school pupils authorized to attend high school outside of the counties in which they reside has been adopted by the county superintendent of schools, as provided in Section 1263.8, the county superintendent of schools in which any such high school pupil resides, shall immediately give to the county treasurer written notice setting forth the names of the high school pupils authorized to attend high school outside of the county, with the name of the high school and the county in which situated which each pupil has been authorized to attend, with the amount appropriated in such budget for each such pupil. The county treasurer shall, in the months of December and June in each school year, and immediately after the apportionment of the high school tax levy fund has been made, transmit to the county treasurer of each county in which any such high school pupils has been authorized to attend high school, the amount apportioned for such high school pupil out of such fund, together with the name of such high school pupil for whom the apportionment has been made and the county treasurer of the county receiving the same shall credit such amount to the proper fund of the high school which such pupil has been authorized to attend."

It will be noted that, where the parent or guardian of any eligible high school pupil has made proper application to the county superintendent of the county of his residence, before September 1 of any year,

to attend an accredited high school outside the county of his residence, the county superintendent must authorize the same, provided the high school of attendance is within the state or in a county outside the state but adjacent to the county of the student's residence.

The foregoing language is mandatory.

Then the legislature provided that, after the budget for high school pupils has been adopted, as provided in Section 5 of said Act (Section 1263.8), the county superintendent of the county wherein the pupil who will attend a high school without the county resides shall immediately give the county treasurer written notice of the names of the high school pupils authorized to attend high school outside of the county and the name of the high school and the county in which the high school is situated in which each such pupil has been authorized to attend, with the amount appropriated in such budget for each pupil. Then the county treasurer shall, in the months of December and June in each school year, and immediately after the apportionment of the high school tax levy fund has been made, transmit to the county treasurer of each county in which any such high school pupil has been authorized to attend high school the amount apportioned for each such high school student, with the name of the student. The county treasurer receiving the same shall credit such amount to the proper fund of the high school which such student has been authorized to attend.

The foregoing language is mandatory both as to the acts and duties therein required of the county superintendent and the county treasurer.

Section 5 of the aforesaid Act, amending Section 1263.8, provides that—in counties where students attend a high school outside of the county of their residence, as provided in Section 1262.81, as amended by Chapter 217, Laws of 1939, **or have been placed in a state institution**—it shall be the duty of the county superintendent on or before the third Monday in July to prepare a budget for an amount equal to the average amount budgeted per eligible high school pupil for maintenance and operating purposes for all high schools within the county in which such pupil resides in the annual final budget for the school year immediately preceding, for each student whose attendance outside of his county has been authorized, or **who is an inmate of a state institution**. This section then provides how such amount per pupil shall be determined, in accordance with Section 1263.5, as amended by Chapter 64, Laws of 1941.

It is to be noted the Act provides for such budgeting, and transfer of such budgeted funds, for both students who have been authorized to attend high school outside of the county of their residence and also students who have been placed in or are inmates of a state institution, where such students attend a public high school outside the county of their residence.

The act also provides that, immediately after such budget has been prepared, the County Superintendent of Schools preparing such budget shall give written notice to the County Superintendent of Schools of each county in which any high school student has been authorized to attend high school under the provisions of this act. Such notice shall contain the name of each student, the high school the student has been authorized to attend, and the amount budgeted for each such student. The act then provides how this notice shall be considered in making the preliminary and final high school budgets when such student or students come in from an outside county.

It will be noted the above procedure conflicts, to some extent, with Section 1262.82, Revised Codes of Montana, 1935. However, Chapter 217 of the Laws of 1939 provides: "All Acts and parts of Acts in conflict herewith are hereby repealed." Therefore, as to any conflict between Section 1262.82 and Chapter 217, Laws of 1939, the latter controls and the former is repealed to that extent.

Therefore, it is my opinion that, where the parent or guardian of any eligible high school pupil or student makes application to the County Superintendent of the county of his residence before September 1 of any year to attend an accredited high school outside of the county of his residence, it is the duty of such County Superintendent and the County Superintendent must authorize the same. A like duty exists where a student has been placed in or is an inmate of a state institution and is eligible to attend a high school outside the county of his residence. The County Superintendent shall, immediately after the budget for high school pupils has been adopted, give the required notice to the County Treasurer of her county. Such County Treasurer shall then, at the times required, transmit the funds as specified with the other information required.

The better procedure would be for the superintendent of the state institution, having any inmates eligible to attend a high school outside of the county of said inmates' residence, to give notice to the county superintendent of each county of the number, name and age of each such student inmate resident of such county. In this way, each County Superintendent would be in a position to make her authorization.

Sincerely yours,

JOHN W. BONNER
Attorney General