

No. 213

SCHOOL TRUSTEES—TRANSPORTATION OF PUPILS

Held: The transportation of pupils by school trustees is governed by Chapter 152, Laws of 1941, and by the provisions of that law the school trustees cannot offer transportation facilities to some school children and refuse it to other school children, even though the parents of those children who are refused transportation are financially responsible and the parents of those who are offered transportation are not able to pay for the same.

August 20, 1941.

Mr. D. W. Doyle
County Attorney
Pondera County
Conrad, Montana

Dear Mr. Doyle:

You have submitted to this office the following proposition:

"On June 22nd, I wired you as follows:

'If school district decides to budget for transportation at all must it budget for all eligible pupils or can it budget for a certain class of pupils or for all pupils living beyond a distance specified by the board. Wire answer to Elsie Campbell, County Superintendent of Conrad. Must have answer Monday as that is last day for fixing budget?'

and in response thereto you wired Miss Campbell, the Superintendent of Schools, as follows:

'Section 13 of Chapter 152, Laws of 1941, among other things provides that under extraordinary conditions upon the recommendation of the County Superintendent and Board of County Commissioners the State Superintendent of Public Instruction and the State Board of Education may permit the payment of one half of the actual cost of transportation as provided in this act even though the school district or county high school does not provide the other half. If all the above named authorities think case extraordinary then the State's share of transportation can be paid within the district or county paying its part.'

"You apparently misunderstood my wire when you answered it.

"What I would like to know is this: In the event a school district decides to budget for transportation for any of the children within the district must it budget for all children who are eligible for transportation? In other words, may the district furnish transportation to some children and refuse to furnish any transportation to others? Or can a district which decides to furnish any transportation furnish it only to children living beyond a certain distance to be specified by the board in its resolution and can the board furnish transportation to children whose parents are unable to send them to school without such transportation and refuse to furnish it to children whose parents are financially able to furnish it themselves?"

In my opinion all of your questions are answered by Chapter 152, Laws of 1941. Section 1 of that law provides in part:

"The board of trustees of any school district or county high school within the State of Montana shall have the power to furnish transportation to and from school for all pupils residing within their district, who are enrolled in the public schools of their district, and who reside three (3) or more miles distant, over the nearest practical route, from a public elementary or secondary school."

You will note Section 1 in effect provides the board of trustees has power to furnish transportation to and from school for all pupils residing within the district.

Section 9 of the Act provides in part as follows:

“Any child, not younger than six (6) nor older than twenty-one (21) years, whose residence is in the State of Montana, three (3) or more miles distant, over the shortest practical road, from the nearest open public elementary or public secondary school (disregarding district and county boundary lines) of the State of Montana; or whose residence is one and one-half (1½) or more miles, over the shortest practical road, from the nearest point of an established public school bus route, is entitled to transportation for each day he attends a Montana public school.”

You will note from a reading of that section here again the Legislature said “any child.”

Section 14 of the act provides the board of trustees shall provide a budget to cover transportation or services in lieu thereof, provided for in the act.

As I read the act I can find nothing therein that in any way gives the trustees power to discriminate.

It is therefore my opinion, if the district budgets at all, it must do so for all children who are eligible for transportation. I do not believe the district can furnish transportation to some children and refuse to furnish transportation to others. A board which decides to furnish transportation must furnish it to all children who live three (3) miles or more distant from a public school. It is my opinion also a board cannot furnish transportation to children whose parents are unable to send them to school without such transportation and then refuse to furnish it to children whose parents are financially able to furnish it themselves.

The schedule for paying for individual transportation which the board of trustees can adopt is provided for in Section 7 of the act.

Sincerely yours,

JOHN W. BONNER
Attorney General