

thorized by Section 1202, Revised Codes of Montana, 1935, in the amount of one-third of the actual cost of transportation prior to the apportionment of the fund under the provisions of Section 1204, Revised Codes of Montana, 1935.

February 25, 1944.

Mr. Ernest E. Fenton
County Attorney
Treasure County
Hysham, Montana

Dear Mr. Fenton:

You have submitted the following questions for my opinion:

"1. Does sub-section (b) of Chapter 189, Laws of 1943, impliedly amend or modify Section 1204, Revised Codes of Montana, 1935?

"2. If your answer to Question No. 1 is in the negative, then which of these two conflicting enactments should be followed by the county officers in the distribution of the county common school fund?

"3. If sub-section (b) of Section 2, Chapter 189, Laws of 1943, impliedly amends or otherwise modifies Section 1204, Revised Codes of Montana, 1935, then does it not follow that this sub-section embraces the subject of the county common school fund and the apportionment thereof since that is the subject of the statute so modified or impliedly amended; and does it not then further follow that said sub-section (b) is void as in contravention of Section 23, Art. V of the Constitution in that neither the subject of the county common school fund nor the apportionment of the same is expressed in the title of Chapter 189, Laws of 1943?"

Subsection (b) of Section 2, Chapter 189, Laws of 1943, provides:

"(b) Each school district maintaining one or more elementary schools, or providing for the transportation of its elementary pupils to attend school in another district, meeting the requirements of this act, shall be entitled to reimbursement from the county common school fund provided by the tax levy authorized and made in accordance with the pro-

Opinion No. 180.

Schools and School Districts—Transportation—Taxes.

Held: School districts maintaining elementary schools, or which provide transportation to a school in another district, are entitled to reimbursement from the fund provided by the tax levy au-

visions of Section 1202, of one-third ($\frac{1}{3}$) of the actual cost of transportation, or services rendered in lieu thereof, semi-annually, such reimbursement to be made on duplicates of the certified claims for reimbursement by the state. No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts."

It is to be noted that the school districts are to be reimbursed for the transportation of elementary pupils from the county common school fund provided by the tax levy authorized by Section 1202, Revised Codes of Montana, 1935. The annual tax levied under the provisions of Section 1202 is a county-wide levy "for the support of common schools." The money realized from the tax is apportioned in part to the various school districts under the provisions of Section 1204, Revised Codes of Montana, 1935, which provides in part:

"All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between six and twenty-one years of age as shown by the returns of the district clerk for the preceding school census."

You suggest that the last sentence of subsection (b) of Section 2, Chapter 189, Laws of 1943, amends Section 1204, Revised Codes of Montana, 1935. The sentence I refer to is:

"No apportionment shall be made of such common school fund in either June or December in each year until after such reimbursements therefrom have been made to such school districts."

Consideration of the terms of Section 1204 leads to the conclusion that it is not mandatory that all the money realized from the tax levied under Section 1202 shall be apportioned by the county superintendents. The section states, "all school moneys apportioned by the county superintendents of common schools shall be apportioned . . ." The language used indicates that when school moneys are apportioned, they shall be apportioned in the manner indicated in the

section. It does not by its terms provide an exclusive disposition of school funds.

The foregoing interpretation of Section 1204 is given support by the provisions of Section 1202 which supplies the funds which are under consideration. Section 1202 provides in part:

"In addition to the provisions for the support of common schools, hereinafter provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax . . ."

The use of the phrase "for the support of common schools" permits a general use of the moneys realized for school purposes. It is a reasonable interpretation of the phrase to allow the fund to be used in part for the transportation of the students to the schools they attend.

Section 964, Revised Codes of Montana, 1935, provides in part:

"The county superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly . . ."

The use of the phrase "in accordance with the provisions of this title" is a limitation on the authority of the county superintendent and is an instruction that the superintendent shall apportion school moneys as otherwise provided in the school law. This section is only a definition of the superintendent's duties and does not pertain to a distribution of school moneys.

Therefore, it is my opinion that school districts maintaining elementary schools, or which provide transportation to a school in another district, are entitled to reimbursement from the fund provided by the tax levy authorized by Section 1202, Revised Codes of Montana, 1935, in the amount of one-third of the actual cost of transportation prior to the apportionment of the fund under the provisions of Section 1204, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General