

VOLUME NO. 37

OPINION NO. 17

COUNTY TRANSPORTATION COMMITTEE - Authority under section 75-7015, R.C.M. 1947, to change transportation service areas and school bus routes; SCHOOLS - Authority under section 75-7015, R.C.M. 1947, of transportation committee to change transportation service areas and school bus routes; REVISED CODES OF MONTANA, 1947 - Sections 75-7001, 75-7005, 75-7008, 75-7015, 82-4202.

HELD: After establishment of transportation areas and school routes for the proximate school year, a county transportation committee has continuing authority to consider new facts and circumstances arising after transportation areas and school routes were initially established, and, based upon such new facts and circumstances, to change a transportation service area and approve, disapprove, or adjust proposed modifications to school bus routes which are submitted to it by a district board of trustees.

18 April 1977

Charles M. Joslyn, Esq.
Teton County Attorney
Teton County Courthouse
Choteau, Montana 59422

Dear Mr. Joslyn:

You have requested my opinion concerning the authority of a county transportation committee to change a school bus route or transportation area after they are initially established. I have stated your question as follows:

When a county transportation committee has established transportation areas and school bus routes for the proximate school year, may it thereafter meet and change or adjust an established school bus route or transportation area?

Section 75-7015, R.C.M. 1947, specifies the duties and powers of a county transportation committee, providing in relevant part:

It shall be the duty of the county transportation committee to:

(1) establish the transportation service areas within the county, without regard to district boundary lines, which will define the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program;

(2) approve, disapprove, or adjust the school bus routing submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1); * * *

Neither section 75-7015, nor any other statutory provision I have been able to find, expressly permits or forbids a county transportation committee to change a school bus route or transportation service area after their initial establishment. Ordinarily, an express delegation of authority to an officer, agency, commission, or department confers by implication those implied powers which are necessary for the efficient exercise of the expressly granted powers. Guillot v. State Highway Commission, 102 Mont. 149 (1936); Dietrich v. Deer Lodge, 124 Mont. 8, 218 P.2d 708 (1950). Where the manner or method of exercise of the delegated authority are not prescribed by statute, any reasonable manner and method of exercise are permitted. See Thompson v. Gallatin County, 120 Mont. 263, 184 P.2d 263 (1947).

School bus routes and service areas are not matters which may be established with finality for all time. Student migration into and out of districts, as well as enrollment changes, may present changed circumstances requiring transportation adjustments. A once yearly review and establishment of transportation areas and school bus routes is both reasonable and necessary. However, transportation committee action on a once a year basis does not freeze student migration or enrollment for the coming school year. A student moving into a district during the school year becomes an eligible transportee, section 75-7001, R.C.M. 1947; and if the school district already provides transportation to its students it must provide transportation to the new enrollee, section 75-7008, R.C.M. 1947. In providing transportation to new students, it may be appropriate and reasonable to adjust an existing school bus route. Similarly, migration of students from a district may permit the alteration or contraction of a route. Minor adjustments in transportation service areas may also be appropriate where there are significant changes in enrollment patterns. The conditions under which school bus routes and transportation areas are established are not static, and it is my opinion that the

statutory authority of section 75-7015 confers with it, impliedly, continuing authority to change transportation service areas and approve, disapprove or adjust proposed modifications to school bus routes.

In reaching this conclusion I have considered the rules and regulations which have been promulgated by the Superintendent of Public Instruction.

Section 75-7005, R.C.M. 1947, authorizes the superintendent to prescribe rules relating to transportation and the approval of school bus routing by transportation committees, providing in relevant part:

In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules and regulations for the approval of school bus routing by the county transportation committee;* * *

Pursuant to this statutory authority, the superintendent has promulgated rules which are applicable to transportation committees. The Montana Administrative Procedure Act, Title 82, chapter 42, R.C.M. 1947, is not applicable to "(g) the administration and management of educational institutions," section 82-4202(1), R.C.M. 1947. 34 OP. ATT'Y GEN. NO. 5 held that the Superintendent of Public Instruction is within the above exception. Similarly, transportation committees are part of the administration and management of schools. Regulations are found in the Montana Pupil Transportation Handbook (October 1976), section V, and Rules of Procedure for School Controversies, Rules 39-51 (March, 1976). None of the rules govern the time and procedures for establishing transportation service areas or approving school bus routes. However, the Rules of Procedure, which regulate appeals from transportation decisions of boards of trustees and requests for reconsideration of transportation committee decisions, merit further examination.

Rule 39 of the Rules of Procedure for School Controversies provides in relevant part:

(b) The county transportation committee shall hear appeals from decisions of boards regarding transportation. The county transportation committee shall also hear requests for reconsideration of its decisions establishing transportation service areas or approving, disapproving or adjusting bus routes submitted by the boards in the county.

The rules further provide specific procedures and time limits for the submission and hearing of requests for reconsideration. Rule 40 requires that request for reconsideration be submitted within ten (10) days of the transportation committee decision of which reconsideration is sought. Rule 40 provides:

Any person or board desiring reconsideration by the county superintendent or committee of a decision shall request such reconsideration in writing by sending the request to the county superintendent within ten (10) days of the decision. The request shall clearly identify the decision.

I do not read Rule 40 to prohibit subsequent requests for and consideration of adjustments to existing transportation service areas or school bus routes based upon changed circumstances.

Rules 39 through 51 establish formalized reconsideration procedures which require reasoned analysis of the prior decision, and, by establishing time restrictions for reconsideration of prior decisions, they prevent continual relitigation of issues already decided. In effect the rules provide for administrative res judicata; however, the fabric of administrative res judicata does not stretch so far as to prohibit a transportation committee from considering new and changed circumstances and rendering new decisions adjusting existing transportation areas and routes. The rules prevent relitigation of issues and facts already presented and decided: New facts and issues are appropriate bases for commencement of new proceedings for area and route adjustments. The distinction is well stated by Professor Kenneth Culp Davis in his Administrative Law Treatise, section 18.09, Volume 2, page 610 (West Publishing Co. 1958):

Continuing jurisdiction to take account of developments after the entry of an order is very common. For an equity court to hold a case so as to take such further action as evolving facts may require is familiar judicial practice, and administrative agencies necessarily are empowered to do likewise. When the purpose is one of regulatory action, as distinguished from merely applying law or policy to past facts, an agency must at all times be free to take such steps as may be proper in the circumstances, irrespective of its past decisions. (Emphasis added.)

THEREFORE, IT IS MY OPINION:

After establishment of transportation areas and school routes for the proximate school year, a county transportation committee has continuing authority to consider new facts and circumstances arising after transportation areas and school routes were initially established, and, based upon such new facts and circumstances to change a transportation service area and approve, disapprove, or adjust proposed modifications to school bus routes which are submitted to it by a district board of trustees.

Very truly yours,

MIKE GREELY
Attorney General