

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 115

SCHOOL BOARDS - Definition of "eligible transportee" under school transportation statutes;
SCHOOL BOARDS - Permission required for eligible transportee to be provided transportation out of district;
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SCHOOL DISTRICTS - Permission required for eligible transportee to be provided transportation out of district;
MONTANA CODE ANNOTATED - Sections 20-5-301(3), 20-5-302, 20-10-101, 20-10-121(1), 20-10-122.

- HELD: 1. To be designated an "eligible transportee" for the purpose of the school transportation statutes, a pupil must reside more than three miles from the closest school, regardless of the school's location inside or outside the resident school district.
2. If an "eligible transportee" wishes to attend a school outside his district, he or she must obtain permission from the resident district school board in order to be provided transportation by the resident district.

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14 October 1988

Ted O. Lympus
Flathead County Attorney
P.O. Box 1516
Kalispell MT 59903-1516

Dear Mr. Lympus:

You requested my opinion on the following question:

What is the obligation of a school district which does not provide bus transportation to pay transportation costs to parents who enroll their child without permission of the resident district's board of trustees in a district other than the district of residence?

In your request you stated that several school districts in Flathead County do not provide school buses for student transportation, but instead provide reimbursement contracts to those who are eligible for transportation. Your question is whether those contracts must be offered to parents who, without permission of the resident district school board, send their children to schools outside their resident district.

The governing statute is section 20-10-121(1), MCA, which provides in part:

The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation.

An "eligible transportee" is defined in section 20-10-101(2), MCA, as:

- [A] public school pupil who:
 - (a) is not less than 5 years of age nor has attained his 21st birthday;
 - (b) is a resident of the state of Montana;

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(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) s deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school. [Emphasis added.]

Thus a pupil is not an "eligible transportee" if he or she resides within three miles of a school regardless of the school's location inside or outside the resident school district.

The meaning of a statute and the legislative intent are to be ascertained from the plain, unambiguous language used. State ex rel. Huffman v. District Court, 154 Mont. 201, 461 P.2d 847 (1969). The rules of statutory construction require the statutory language to be read with a view to giving vitality to and making operative all provisions of law, accomplishing the intention of the Legislature when possible. Burritt v. City of Butte, 161 Mont. 530, 508 P.2d 563 (1973).

Under section 20-10-121(1), MCA, the resident school district is obligated to provide transportation to all eligible transportees if it provides transportation to any. No such obligation exists with respect to pupils who are not "eligible transportees." §5 20-10-122, MCA.

However, the clear language of section 20-10-121(1), MCA, authorizes the resident school district to provide transportation for an eligible transportee to attend school outside the district only when the student "has been granted permission."

The language of the pertinent statutes leads me to conclude that if a school district is providing transportation to any "eligible transportee" it is obligated to provide transportation to all "eligible transportees" to attend school in their district. However, an "eligible transportee" who wishes to attend a school outside his district must obtain permission from his school board to be provided transportation by his district.

My conclusion is supported by the fact that the school tuition provisions were enacted in the same year as the

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school transportation statutes. §§ 20-5-301 to 314, MCA. Statutes passed at the same time and relating to the same general subject are to be construed together. City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221, 230 (1971). The school tuition and transportation statutes both authorize the resident school district to pay for students to attend school outside the district under certain circumstances. Under section 20-5-301(3)(a), MCA, if a resident school is more than three miles and a nonresident school is less than three miles from the pupil's residence, the resident district is required to pay tuition for the pupil to attend school outside his district. If a child lives more than three miles from any available school and his resident district is providing transportation to eligible transportees, the resident district is not required to pay tuition for the child to attend a nonresident school; the child must specifically request the school to pay his tuition to attend a school outside his district. §§ 20-5-301(3)(b), 20-5-302, MCA. Thus, a student who lives more than three miles from any school--an "eligible transportee" under the school transportation statutes--and whose resident district provides transportation to "eligible transportees," must obtain permission from his school board for payment of his tuition to attend a school in another district.

By the same token, when a pupil's district is providing transportation to any "eligible transportees," an "eligible transportee" is entitled to transportation to a school in his district; however, he must obtain his school board's permission to be provided transportation by his district to a nonresident school.

As mentioned earlier, some school districts are not providing actual transportation but instead are reimbursing "eligible transportees" for transportation costs. This type of reimbursement is included in the definition of "transportation" for the purpose of the school transportation statutes. § 20-10-101(1)(c), MCA.

THEREFORE, IT IS MY OPINION:

1. To be designated an "eligible transportee" for the purpose of the school transportation statutes, a pupil must reside more than three miles from the closest school, regardless of the school's location inside or outside the resident school district.
2. If an "eligible transportee" wishes to attend a school outside his district, he or she must obtain permission from the resident district

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school board in order to be provided
transportation by the resident district.

Very truly yours,

MIKE GREELY
Attorney General