

School Funds, Apportionment of, For High School—High School, Apportionment of Funds For, When Pupils Reside Out of District.

Apportionment of school funds is not required where pupils attend a high school outside of the district or in another county in which they reside.

June 8, 1920.

Mr. J. E. Kelley,
County Attorney,
Boulder, Montana.

Dear Sir:

You have submitted to this office the question of whether the provisions of Subdivision 5 of Section 507 relating to the transfer of school moneys due by apportionment from one to another where pupils are attending school outside their districts applies to (1) the case of pupils

attending a high school outside their district but within their own county, (2) to the case where they are attending high schools outside the county in which they reside.

In your discussion of the matter you have arrived at the conclusion that transfer of moneys is not required in either of the above cases. I agree with your conclusion insofar as it relates to any high school within the county in which the pupils reside which levies or participates in a levy on the whole county of taxes for the purpose of maintainance, either under the provision of Section 2112 of the General School Laws or Chapter 105 Session Laws of 1917.

"Attendance at any high school to whose support such money is apportioned in accordance with the provision of this act shall be free to all eligible pupils residing within the district in the county in which such and accredited high school is situated." (Subdivision 3 of Section 2112.) This is also substantially the language of Section 3 of Chapter 105 above referred to. Were it not for this provision these acts would in my opinion be unconstitutional as taking property without due process of law. You will note that it could make no difference which high school the pupils attended for the reason that apportionment is fixed by the county superintendent of schools according to the average daily attendance of high school classes.

You will note also that only those pupils who attend school in another district and who are, in the opinion of the county superintendent of schools, attending such district for a good and sufficient reason, are entitled to have their apportionment transferred to such district. See Subdivision 5 of Section 507.

There is no provision of law to my knowledge requiring a transfer of funds where high school pupils attend high schools in another county from that in which they reside and for that reason it would be purely optional with the district from which they came as to whether any transfer of apportionment be made by it.

Respectfully,

S. C. FORD,

Attorney General.