

**Apportionment — Counties — Funds — High Schools—
School Districts—School Children.**

Where children reside in a school district of one county and attend school in another county and district, no transfer of their apportionment of school funds may be made from the county and district of residence to the county and district where they are attending.

Transfer of apportionment of school funds for a pupil may be made between counties in some cases of high school pupils.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have requested the opinion of this office with reference to the transfer of apportionment where pupils attend school outside of their own district and in another county. You state that it is the opinion of the School Board in Cascade county that apportionment should be transferred where pupils attend the Great Falls schools from Chouteau county but that the County Superintendent of Chouteau county has refused to approve the attendance of pupils at the Great Falls schools. You cite Section 1013, Revised Codes of 1921, in support of your contention that the County Superintendent is authorized and should be directed to approve this attendance outside of the district of the pupils' residence.

This section provides as follows:

"Any Board of Trustees must, when pupils belonging in their district are attending school in another district, transfer school moneys due by apportionment to such pupils to the district in which they are attending school, if in the judgment of the County Superintendent of Schools said children are attending school in another district for a good and sufficient reason."

It is to be noted that the question of whether children are attending outside of their district for a good and sufficient reason is here left to the discretion of the County Superintendent of Schools, and this is a discretion which cannot be controlled. The purpose of this section, however, was to allow the County Superintendent to authorize the transfer of apportionment from one school district to another within her own county, where, by reason of convenience of the pupils, they attend another district, usually an adjoining district to their place of residence.

The County Treasurer is the treasurer of all school districts in the county and the County Superintendent apportions all school moneys among the various school districts of her county. (Section 964, Revised Codes of 1921.) But there is no provision of law authorizing money to be transferred from a school district in one county to a school district in another county under the provisions of this section.

That the Legislature did not intend a transfer to be made under this section is apparent from the provisions of Chapter 19, Session Laws of 1923, amending Sections 1280 and 1282, Revised Codes of 1921. These sections, as amended, permit a transfer of the county high school tax levy to be made in certain instances when made by the County Superintendent of Schools and directed by the County Commissioners.

Section 1282, as amended, provides as follows:

"Attendance at any high school, to whose support such money is apportioned in accordance with the provisions of this Act, shall be free to all eligible pupils residing in the county in which such accredited high school is located.

"No attendance of a high school student outside of the county of his residence shall be counted in determining attendance, except, in cases where a high school student by reason of convenience to his place of residence or by reason of employment, and for reason of vocational training not otherwise available attends a high school in another county, and such attendance is approved by the County Superintendent of Schools of the county of his residence; the County Commissioners of said county are authorized, in their discre-

tion, to direct the County Treasurer to pay over to the school district or county high school where the pupil attends a proportionate share of the high school tax levied in said county, the amount to be determined in the manner in which the distribution of high school funds is made in the county in which the students concerned reside.”

This section sets out the only reason where transfer of the high school tax is permitted, and this would indicate that it is the only case in which transfer from one county to another is intended.

It is, therefore, my opinion that Section 1013 was not intended to authorize the transfer of apportionment where the pupils attend schools in a district in another county, but that Section 1282, as amended, does permit the transfer of a proportionate share of the high school tax levy where high school students attend a high school in another county for any reason therein enumerated and when such attendance is approved by the County Superintendent of Schools of the county of his residence and the Board of County Commissioners authorize the transfer. In such case, the amount is to be determined in the manner in which the distribution of high school funds is made in the county of the students' residence. This is determined by two methods: (1) If apportionment is due from a county having a county high school, the amount is determined according to average daily attendance in accredited high school classes for the school year next preceding. In order to determine the proportion due to the county where the students attend, their average daily attendance would have to be determined in that county and added to average daily attendance of all students in the county from which contribution was asked. (2) If apportionment is due from a county having no county high school, but which levies a tax for high school purposes, the amount to be transferred is to be determined by apportioning two-thirds of the total amount collected in proportion to the number of teachers employed and necessary for the effective instruction of pupils in accredited high school work, and one-third of the total amount in proportion to the total number of days' attendance of pupils in accredited high school work for the school year next preceding.

Average daily attendance would have to be determined as in the case of counties having a county high school. In either case, transfer could not be made until the end of the school year for the reason that average daily attendance could not be determined in advance, but must be determined on attendance for the whole year.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.