

**Appeals—High School Apportionment—Decisions—County Superintendent of Schools—Schools—Transfers—High Schools—Students.**

While an appeal lies from the ruling of the county superintendent of schools disapproving attendance of high school students outside of county, only questions of law can be reviewed on appeal by State Superintendent of Public Instruction.

Miss Elizabeth Ireland, November 12, 1930.  
State Superintendent of Public Instruction,  
Helena, Montana.

My dear Miss Ireland:

You have submitted to me the question of the right to appeal from a decision of the county superintendent of schools made under Section 3 of Chapter 109, Laws of 1929, relating to the matter of authorizing the transfer of apportionment where a high school student attends a high school outside the district of his residence. The part of the section referred to provides as follows:

“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 rea-

son of convenience to his place of residence or by reason of employment or for reasons 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, in which case the county commissioners of said county must 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.”

Section 966 provides that an appeal may be taken to the superintendent of public instruction. The statute gives this appeal for the purpose of expediting disputes arising over school matters. The only question, however, that is presented upon the appeal is some wrong growing out of some infraction of the law applicable and of which the aggrieved party has the right to complain. The county superintendent is vested with the discretion in her determination of whether the attendance shall be approved. It is not intended the state superintendent should divest her of this discretion in case an appeal is taken. The only thing that the state superintendent can do under the circumstances is to decide as to the law if there is any misconstruction of the law involved. It is therefore my opinion that the discretion vested in the county superintendent cannot be reviewed by the state superintendent in case of appeal from the refusal of the county superintendent to approve attendance outside of her county.

Very truly yours,

L. A. FOOT,  
Attorney General.