

Schools—Transportation—High Schools—Pupils.

Districts maintaining no high schools are not authorized to transport high school pupils to another district except where high school is closed. There is no statutory authority for a school district to transport high school pupils from another district to a school within its own district. If a district does so, to the detriment of its own district, taxpayers therein

could enjoin it from so doing. Whether the district from which said pupils are transported by the other district would have a legal cause of action against the transporting district is dependent upon the question of whether any actionable detriment is caused such as would give legal cause for complaint.

Frank P. Gault, Esq.,
County Attorney,
Great Falls, Montana.

May 15, 1929.

My dear Mr. Gault:

I have been requested to give an opinion on the following matter:

"Simms school district which is known as School District No. 39 of Cascade county, has been running a bus during the present school year and has been transporting foreign pupils who are attending Simms high school and also grade pupils from the Simms district. Not all of the high school students that it is transporting reside in the Simms district, some of them residing in other school districts.

"Objection has been lodged by the Fort Shaw school district, known as School District No. 82 of Cascade county, to the transportation of high school students resident in its district to the Simms high school. Many of the high school students from other districts have been attracted to the Simms high school owing to the fact that they have a Smith-Hughes course and commercial course at Simms, which is lacking at Fort Shaw."

The matter of transportation has also been presented from the opposite angle, that is, where a district does not maintain a high school, may it legally use its general fund to pay rent, tuition, board or transportation of high school pupils residing in the district and desiring to attend high school in another district maintaining a high school.

A public school is defined to be one that is maintained under the supervision of the board of trustees in each school district. Every such school is required to maintain the elementary grades and may at the option of the board comprise kindergarten and high school grades. It may, when the interests of the district require it, maintain high school grades. (See Sections 1053 and 1009 R.C.M. 1921).

Section 1054 R.C.M. 1921 prescribes the course of study required in elementary grades. No course of study is prescribed for high schools by statute.

Section 1262 et seq. R.C.M. 1921, which provide for the establishment of county high schools, has stated therein: "for the purpose of affording better educational facilities for pupils more advanced than those attending the elementary schools." It was intended as a substitute for the district high school and was first enacted in 1899.

All pupils eligible in the county who desire to attend a county high school when established may do so.

The act provides for a tax upon all taxable property in the county for the support of the county high school. This tax is levied upon all property within school districts which maintain high schools as well as upon those that do not. This tax was considered unfair to districts maintaining their own high schools and subsequently provision was made for a division of the high school tax between the county high school and districts maintaining high schools on the basis of average daily attendance. (See Section 1280).

In counties not maintaining county high schools provision is also made for a county tax for high school maintenance. This tax is divided on the basis of attendance and teaching positions among the various districts maintaining high school classes. It is also levied upon property in districts not maintaining high schools as well as on property in districts that do maintain high schools. (See Section 1281).

The obligations which the law imposes upon all districts that maintain high school classes whether in counties maintaining county high schools or in counties where no county high school has been established is to require attendance to be free to all eligible pupils residing in the county. (See Section 1282).

The effect of participation in a county high school tax by any school district is to convert the high school into a county high school administered by a local board. No school district not maintaining high school classes participates in any high school tax although the property therein is taxed for high school purposes and although there are pupils in such districts eligible to high school; otherwise, taxpayers of each district not maintaining high school classes are required to contribute to the support of one or more high schools in one or more other districts of the county.

To what extent then was the transportation act intended to apply, if at all, to high school pupils attending a school supported in whole or part by a county tax?

The transportation act had its inception as Chapter 68, Laws of 1903, and as originally enacted it merely authorized trustees to close their school and send the pupils to a school in another district and pay transportation and tuition out of any moneys belonging to the district. This provision is still retained without modification as the first paragraph of what is now Section 1010 R.C.M. 1921. This original act did not authorize the general transportation of pupils. It only applied to cases where the board determined it was for the best interests of the district and the pupils therein to close their own school and send the pupils to another district.

In 1911 the legislature amended the original act by adding thereto a paragraph authorizing transportation of pupils from their homes to the public school or schools maintained in the district. (Chapter 40, Laws of 1911).

In 1923 the section was further amended by adding the provision authorizing the school board to pay board or rent of pupils who were

sent to some school in their own or some other district. The obvious purpose of this provision was to provide schooling for those pupils in the district who were not so situated that it was practicable to furnish actual transportation; that is, where they lived off the road or too far away to be picked up by the school bus and be transported to a school in their own district.

Studying the history of the various statutory provisions relative to establishment and maintenance of high schools in connection with the transportation act as contained in Section 1010, as amended, it is apparent that all that the legislature intended by permitting high schools to participate in the apportionment of a county tax for maintenance purposes on condition that all eligible pupils of the county be admitted free of tuition charge by such schools was that attendance should be free to such eligible pupils residing in the county as desired to avail themselves of the privilege of attending any such high school.

Nothing is said in either Section 1010 or Section 1282 about furnishing transportation to any such high school pupils.

Where a district does not elect to maintain a high school it is under no obligation to furnish any high school pupil residing therein with a high school education, and it follows that where it is not under obligation to do the principal thing it is under no obligation to do something that is merely incidental thereto. As before noticed, the obligation imposed by law on all school districts is to furnish schooling in the primary grades; transportation was authorized as an incident to this obligation. However, it was not intended to confine transportation to primary grades where resources of the district warrant it in providing high school grades. The wording of the statute is: "When they shall deem it for the best interest of all pupils residing in such district" they may close their school and send the pupils to another district and pay their transportation. If a district is maintaining a high school and closes it for the purpose of sending the pupils to a high school in another district under this provision it could pay transportation. Presumably a financial saving could be made by providing transportation rather than maintaining such grades in the district, and this is the discretion given the board by the first part of Section 1010.

As to the question whether the Simms district is authorized to transport such high school students from the adjoining Fort Shaw district as desire to take advantage of this privilege of attending the Simms school, such school participating in the apportionment of the county high school tax it is my opinion that there is no statutory authorization for a school district to transport high school pupils from another district to a school within its own district; that if a school board does so to the detriment of the Simms district the taxpayers therein could enjoin it from so doing. Whether such action by the Simms district could give rise to any legal cause of action by the Fort Shaw district is a matter which depends, in my opinion, upon whether any actionable detriment is caused the Fort Shaw district such as would give it legal cause for complaint.

The mere fact that pupils residing in the Fort Shaw district attend high school in the Simms district is not sufficient cause for action for the reason that, as hereinabove stated, they have the legal right to attend such high school or any district high school in the county.

This question is one upon which this office can give no opinion, not being advised as to what, if any, detriment is caused the Fort Shaw district that is directly attributable to the action of the Simms district in transporting the pupils of the Fort Shaw district to its school. If any such detriment is caused it can only be ascertained by proof by oral testimony in court and the fact cannot be established as such without judicial finding to that effect.

Very truly yours,

L. A. FOOT,
Attorney General.

By C. N. Davidson, Assistant.