

Transportation—High Schools—Students—Funds—School Districts.

Power of district high school to use district funds to transport high school pupils from without the district discussed.

Mr. George A. Russell,
Clerk of School District No. 3,
Ramsay, Montana.

October 14, 1932.

My dear Mr. Russell:

I have your letter requesting an opinion of this office as to the authority of school district number one of Silver Bow county, which maintains an accredited high school, to pay transportation of high school students residing in school district number three. School district number three adjoins school district number one and there is no other high school in the county, excepting a joint high school located in a distant part of the county.

You state that the members of your school board appeared before the board of school district number one both before and after their budget was completed and requested the school board of school district number one to furnish this transportation. However, school district number one is of the opinion that due to the fact that they have no money in their transportation fund it would be illegal to provide this transportation.

The question of transportation of high school students by district high schools is in a chaotic condition due to the fact that section 44 of chapter 148 of the session laws of 1931, known as the high school code, undertook to deal with this subject of transportation, but inadvertently omitted from the enrolled bill a portion which was intended to provide the means of transportation. The section as it appears in the enrolled bill ends with the incomplete sentence: "and the moneys needed to defray the expense of such rent of * * *" The portion of the incomplete section which appears in the session laws contains this provision "whenever the board of trustees of any school district maintaining an accredited high school shall deem it for the best interests of the district and of any eligible high school pupil residing within the county who is actually enrolled in the high school maintained by the district it may by resolution pay out of the funds of the district a part or all of the expense of the transportation of such pupil," etc.

The question is: does this section, incomplete as it is, authorize the school board maintaining an accredited high school to pay transportation of high school students residing without the district out of the funds of the district?

Section 92 of the same chapter provides as follows:

"The moneys apportioned to any school district or county high school under this chapter shall be held by the county treasurer of the county to the credit of the school district or county high school as its high school fund, and distinct from all other

public moneys; disbursements therefrom shall be made for high school purposes only by warrant specifying on its face the consideration for which it is issued."

Section 87 of the same chapter fixes the schedule for maximum levies and in the latter part contains this proviso:

"* * * providing, however, that nothing herein contained shall be construed as preventing any school district from voting upon itself an additional levy for high school purposes, in accordance with the general school laws pertaining to election for voting additional levies."

Reading these sections together it is apparent that all high school expenses must be paid from the high school fund, excepting where a district has voted upon itself an additional levy for high school purposes.

You state that school district number one has no money in its transportation fund. I take this to mean no district funds for high school transportation.

In a recent discussion of this matter with the school trustees of school district number three it was suggested by the writer that the so-called high school budget is not a budget in the true sense of the word; it is only a temporary estimate of the proposed expenditures upon which the tax levy is made. It is not therefore a limitation such as is the budget act for school districts, which covers only district funds for elementary grades. There is no reason therefore why the high school fund cannot be used for any high school purpose authorized without resort to transfers and without the limitation of their tentative and preliminary budget estimate for particular expenditures.

The trouble is that transportation is authorized to be paid out of district funds. Were it not for this provision the cost could be paid from the high school fund within the limitations fixed by section 93 of this chapter. I regret that I cannot suggest any strictly legal way out of your difficulty.

If we are permitted to give any effect to the portion of section 44 which appears in the enrolled bill by reason of its incompleated condition, we are not aided in this case so far as district number one is concerned, for the reason that the only transportation authorized to be paid is authorized to be paid out of "the funds of the district," not out of the high school fund as is provided in section 18 where a county high school is concerned. Section 44 includes any school district, as well as any school district maintaining an accredited high school, and authorizes it to pay out of the funds of the district a part or all the expenses of transportation of such pupil (residing within the district) to * * * the accredited high school which is nearest or most accessible to the pupil's residence. The accredited high school is authorized to pay out of the funds of the district (when deemed for the best interest of the district) a part or all the expenses of any eligible high school student residing within the county.

Possibly district number one and district number three could arrange to bear the expense jointly out of their district funds under this section. It would probably be to the best interest of district number three

to transport high school pupils rather than maintain a high school and to the best interest of district number one to do so rather than lose the attendance from district number three, thereby diminishing their apportionment of the high school fund which is apportioned on the basis of attendance.

Very truly yours,
L. A. FOOT,
Attorney General.