

**Opinion No. 516****School Districts—High Schools—Transportation of Pupils—Board, Rent and Tuition of Pupils—Contracts—School Funds, Expenditure of.**

HELD: The trustees of an elementary school district have no power to contract for the transportation of high school pupils.

Section 1, Chapter 102, Laws of 1929, may authorize transportation of pupils out of one district into another without requiring that the schools in the latter district be closed.

Pupils of schools other than the contracting district may be furnished transportation so long as such transportation is not a charge against the district contracting and so long as such pupils, or their parents, pay their proportionate share for such transportation.

---

April 19, 1934.

You submit a copy of the decree of the District Court of the Fifth Judicial District, in the case of Maynard Lovell vs. Rebich, et al., trustees of School District 3 in Beaverhead County and request my opinion on the following:

"We respectfully request your opinion as to whether or not the trustees can pay each family living more than three miles from school transportation to their own district school and those families pool their transportation money and hire a bus driver to bring those elementary children to Dillon to school. Can they have high school students as a matter of convenience. The county high school does not allow transportation.

"If we cannot do that, how can we legally transport those children to Dillon? The trustees deemed the matter of transporting pupils outside the three mile limit to Dillon to be for the best interests of the district since the people living several miles from school could and would have broken the district."

The contract made by the board for the transportation of children was successfully attacked on the ground that your board assumed to contract to transport both high school and elementary school children. The trustees of an elementary school district have no

power to contract for the transportation of high school pupils, and, as the contract was shown to be indivisible and no budget authorized anywhere to pay for transporting high school pupils, the court could not, of course, uphold such contract.

The decree does not state, of course, the legal grounds but a letter from the prior county attorney indicates that the court might have decided the question upon the ground that there was no statute authorizing transportation of children out of one district into another unless the trustees closed the school in that district. We think it very likely that the following language in section 1, Chapter 102, Laws of 1929, may authorize transportation without the closing of the schools: "When they deem it for the best interest of such district and the pupils residing therein, that **any of such pupils** should be sent to a school in their own or some other district, they must expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupils from their homes to the public school or schools of such district or for their board, rent or tuition, while actually attending such school, \* \* \*."

Since the law requires the attendance of all children within certain ages, we think that the words "any of such pupils" have a significance. If the provision read "all of such pupils", it would clearly indicate that the school in the district must be closed before the transportation was authorized. Having used the language "any of such pupils," it must have contemplated that a part of the pupils might be transported even though all of them were not transported, and since all pupils within certain ages must go to school, necessarily there must be a local school left to educate those not transported.

Will you consult with the trustees upon the possibility that a method might be found in Chapter 102, Laws of 1929, amending Section 1010, R. C. M., 1921, which provides that the trustees of a school district may contract for the transportation of pupils and may also permit pupils attending other schools to take advantage of the convenience of such transportation operating in their locality even though such pupils attend a school that is not a public school. The contract of the trus-

tees of District No. 3, with the bus operator, must, of course, be confined to the transportation of pupils of the elementary district, to be made a charge against District No. 3. The statute, as we construe it, does not prohibit the carrying of other pupils if the charge or expense of the transportation of **such other pupils is not a charge or expense against District No. 3**, such other pupils paying "their proportionate share of the cost of such transportation." Possibly the high school might pay for the transportation of the high school pupils. As we recall, the Dillon high school, where the high school pupils attend, does not provide for transportation. Such being the case the high school pupils taking advantage of the transportation line operated by the contract to transport the elementary pupils, or their parents, would have to pay their proportionate share for such transportation.

Said Section 1010, as amended, empowers the Board to either furnish transportation for pupils, or pay for transportation per pupil as set out in the statute. The schedule may be changed by the board subject to the approval of the county superintendent.

The statute does not provide any schedule of allowance for board, etc., but it is reasonable to assume that the schedule for transportation would be a fair guide in fixing the amount to be allowed for board, rent and tuition, taking into account the fact that the parents would be relieved of the expense of the board of the pupils at home.

The statutes provide that the trustees may expend school funds for the purposes named. So long as such funds are expended in good faith and within the intent and terms of the statute we think the method is left to the discretion of the Board.