

**Opinion No. 611****School Districts—Budget—Pupils  
—Transportation of Pupils Who  
Move to District After Adop-  
tion of Budget.**

HELD: Children who move into a school district after the annual budget has been adopted and transportation arranged for are nevertheless entitled, without discrimination, to the same rights and privileges of transportation to the school house as other children within the district.

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September 13, 1934.

You request an opinion in the following matter:

"School District No. 16 in this county made up its budget which was approved on the 27th day of July, 1934. At the time the budget was made up and approved it covered items of transportation, as well as other items then apparent to the budget board and trustees. Thereafter, a family with children moved into the district and live a considerable distance from the school house.

"Now referring to Section 1010, Chapter 78, School Laws of 1921, must the trustees arrange for transporting the children of that family to the school house or may they simply transport the ones who lived in the district at the time the budget was made up and adopted since in fact the budget as adopted will not cover all the expense of transportation?"

You submit a copy of an opinion rendered by you in which you hold that the school children coming into the district after the budget was made up can lay no claim to transportation by the school district. You base your decision on the ground that the budget is without any provision for the newcomers and it must necessarily stand as adopted. As a matter of strict statutory construction we think you are correct, but we think other legal questions must necessarily be considered that may possibly control the budget act.

Section 1, Article XI, of the Constitution requires the state to establish and maintain a general and uniform system of public schools. Section 5 provides for apportionment of revenues on the census of children between the ages of 6 and 21 years. Section 6 provides that the schools must be kept open for at least three months in each year, and Section 7 provides that such schools must be open to all children between the ages of 6 and 21 years. Section 1204, R. C. M., 1921, requires that school moneys shall be apportioned to the several districts according to the number of school census children between the ages of 6 and 21 years, the same as Section 5 of Article XI of the Constitution.

The foregoing provisions of the Constitution and statutes, we think, imply that a distribution of the school revenues amongst children between the ages named shall be made without discrimination as far as possible or practical, but such provisions merely outline a basic policy. The question that arises in our mind is, isn't the refusal of the board to furnish the children in question transportation a denial of the Constitutional guarantee of equal protection of the law?

This question you will find quite fully dealt with in the following decisions: *Claybrook v. Owensboro*, 23 Fed. 634; *Davenport v. Cloverport*, 72 Fed. 689; *Ward v. Flood*, 48 Cal. 36, 17 Am. R. 405; *Dawson v. Lee*, 83 Ky. 49; *People v. Detroit Board of Education*, 18 Mich. 400; *State v. Duffy*, 7 Nev. 342, 8 Am. R. 713; *McFarland v. Goins*, 96 Miss. 67, 50 S. 493.

The State of Montana, in establishing and maintaining a common school system, is exercising a governmental function and, having the right to levy and collect taxes for this purpose, it must distribute the benefits of such system equally and fairly amongst that class, the children of school age, for whose benefit primarily the system is set up, and without discrimination. All revenues derived from the public school grants by the Federal Government to the State and all other revenues received by the State for the use and benefit of the common schools must be distributed ratably to the schools throughout the State on the basis of the school census of school children within certain ages. This is obviously

to do justice to all without discrimination against any, and the same equitable rule should apply in local school management. If there is any principle of our governmental system that meets with universal approval it is that all are equal before the law.

It was said in *Ward v. Flood*, 48 Cal. 36, at page 50:

"The opportunity of instruction at public schools is afforded the youth of the State, by the statute of the State, enacted in obedience to the special command of the Constitution of the State \* \* \*. The advantage or benefit thereby vouchsafed to each child, of attending public school is, therefore, one derived and secured to it under the highest sanction of positive law. It is, therefore, a right—a legal right—\* \* \* and as such it is protected, and entitled to be protected by all the guarantees by which other legal rights are protected. \* \* \*

"To declare, then, that each person within the jurisdiction of the State shall enjoy the equal protection of its laws, is necessarily to declare that the measure of legal rights within the State shall be equal and uniform and the same for all persons found therein—according to the respective condition of each—each child as all other children. \* \* \*."

Our opinion is that the children referred to are entitled to the same rights and privileges as other children of the district and without discrimination.