

for transportation shall be paid first and then there shall be distributed "secondly * * * the balance thereafter remaining in the state public school general fund pursuant to the apportionment thereof * * * on the basis of classroom units and pupil attendance."

"2. Must a county or district match the state aid mentioned in (c) of Section 1, Chapter 175, 1935 School Laws, before receiving such aid?"

We can find no such requirement in the Act.

Section 1, to which you refer, provides: "* * * to carry on and support a minimum, foundational, educational program therein, the State of Montana shall provide therefor, and contribute thereto, revenue upon the following schedule: * * *

"(c) For the transportation of pupils, one-half of the cost of such transportation for all pupils, residing three or more miles distant from a public school; but the State Board of Education of the State of Montana shall fix and promulgate a uniform schedule of rates for the transportation of pupils to and from the public schools of the state, and upon the basis of such schedules, so fixed, the contribution of the state to the cost of transportation shall be computed, and the payment thereof made, and in no other way."

Nothing is said in the Act which requires the county or district to have on hand an amount equal to the state's contribution as a condition precedent to receiving its apportionment from the fund created by the Act.

"3. Must provision for such transportation be included in the regular budget?"

Our answer to this question is likewise in the negative.

Section 6 of the Act requires the county superintendent to certify to the state superintendent of public instruction the number of pupils actually attending a public school in his county and residing three or more miles distant therefrom and the actual cost of transportation of such pupils, pursuant to the schedule of rates adopted by the State Board of Education. By Section 7 of the Act the

Opinion No. 134.

Schools—Transportation—Budget—Trustees—Apportionment.

HELD. 1. Under Chapter 175, Laws of 1935, the distribution of transportation funds must be paid first.

2. It is not a condition precedent to apportionment that the county or district have on hand an amount equal to the State's contribution.

3. It is not a condition precedent to receiving the apportionment that the county or district trustees provide for the payment of such transportation in the annual school budget.

4. School trustees may not refuse to expend moneys appropriated by the State for transportation, and may not expend such apportionment for any other purpose.

July 5, 1935.

Miss Elizabeth Ireland
State Superintendent of Public Instruction
The Capitol

This will acknowledge receipt of your letter of June 22, in which you ask for the opinion of this office on five questions concerning Chapter 175, Laws of Montana, 1935.

"1. If there be not sufficient funds in the State Public School Fund as created in Chapter 175 of the Laws of the 1935 session, to carry out the provisions of this act, can any of the funds be distributed according to classroom units before the amount needed for transportation is satisfied?"

Our answer to this question is "no."

Section 9 of the Act expressly provides that the distribution of funds

state superintendent of public instruction is then required to compute the amount of the state's contribution to defray the cost of transporting such children to the public school and to certify said amount to the state treasurer for payment.

The duty of the county superintendent and the state superintendent of public instruction in the premises is mandatory and entirely ministerial. And whatever may be the requirements of other statutory provisions nothing is said in the Act which requires the county or district trustees to provide for the payment of such transportation in the annual school budget as a condition precedent to receiving its apportionment from the fund created by the Act. The language of Section 1 (c), quoted above, strengthens this conclusion.

"4. If a school district or county high school has pupils eligible for transportation and refuse to pay same from funds which could be allotted to such a district or county high school, should the money be allotted to the district or county high school?"

"5. If under the conditions as set forth in Question 4, above, money is allocated to a district or county high school, can the funds be used for any other purpose than for transportation."

Answering both of the above questions, the trustees will not be at liberty to refuse to expend money appropriated by the state for the payment of transportation of pupils or to expend such apportionment for any other purpose. Under the Act, the duty rests upon the state to pay one-half the cost of transportation of pupils living three or more miles from any public school, regardless of the action or wishes of any local board of school trustees.