

Opinion No. 28.**Schools—Transportation—Distance
from School, Computation of.**

HELD: The distance of the pupil from the school should be computed, under Chapter 102, Laws of 1929, from the actual residence of the pupil and not from the nearest point to the residence of the pupil on the public road.

January 22, 1935.

Mr. D. M. Durfee
County Attorney
Philipsburg, Montana

This will acknowledge receipt of your letter of January 7, which is as follows:

"I have just received a letter from a patron of School District No. 8 of Granite County, inquiring how Sec. 1010 of Chapter 102, Session Laws of 1929 should be interpreted. That is, shall the distance that a pupil lives from the schoolhouse be computed from the nearest point to the residence of such pupil on the public road, or from the actual residence itself?

"It seems that a number of pupils are residing a close distance to the three mile limit, that is, if computed from the one point they would be within the three mile limit and com-

puting from another point they would be over the three mile limit.

"Has your office ever passed any opinion as to how the distance from the residence should be computed, as to whether it is from the residence or from the nearest point on the public road to the residence?"

A careful search fails to disclose that the question you submit has been considered heretofore either by this office or the Supreme Court.

However, it is our opinion that the meaning of the statute to which you refer is quite clear. Chapter 102, Laws of 1929, provides: "* * * and provided that the trustees of any district shall not, except where there is rail transportation or where it is necessary to transport pupils for special instruction from school to school, be allowed to expend any of the district's money for transportation of pupils who live nearer than two and one-half miles from the limits of an incorporated city in which the child attends school or nearer than three (3) miles from the school the child attends, unless any child resides on an established consolidated route, provided, however, that this limitation as to mileage shall not apply to districts of the first or second class. * * *" (Underscoring supplied.)

The words "who live nearer" are susceptible of a single definition, and if the legislature intended differently it is our opinion that the law would then read otherwise.

The case of *State v. Mostad*, 34 N. D. 330, 158 N. W. 349, while not directly in point is illuminating on this case. See also *Smith v. Ingraham*, 7 Cow. (N. Y.) 419; *Jennings v. Me-nauh*, 118 Fed. 612, 613.

Accordingly, it is our opinion that the distance should be computed from the actual residence of the pupil and not from the nearest point to the residence of such pupil on the public road.