

**Opinion No. 44.**

**Schools—Transportation, Distance  
From School.**

HELD: Where a private road is available, which is safe and otherwise practicable for travel, the distance traveled over such private road should be used in computing the distance fixed by statute, Section 1010, R. C. M. 1921, as amended by Chapter 102, Laws of 1929.

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February 15, 1935.

Mr. J. P. Freeman  
Deputy County Attorney  
Great Falls, Montana

This will acknowledge receipt of your letter of February 9, requesting an opinion from this office in regard to the transportation of pupils as provided by Section 1010, R. C. M. 1921, as amended by Chapter 102 of the Laws of Montana, 1929.

The following is quoted from your letter:

“The question has been submitted to this office in connection with Section 1010, R. C. M. 1921, as amended by Chapter 102 of the Session Laws of 1929, relating to the transportation of pupils, as to what method

should be used by the school trustees in determining the three miles distance between the school house and the home of the child.

"We have advised the trustees that they should take the shortest possible distance between the two points. However, the question has arisen in one school district where, by the regular established county road, the distance from the home to the school would be more than three miles, whereas the most direct route would be less than three miles. There is nothing contained in the provisions of section 1010 to determine what method should be used by the school trustees in computing the distance. In case the question arises where a person cuts across a section of land in getting to his home, if the owner of the section of land saw fit to bar him from going across and if he had to go around, the mileage would be more than three miles distant between his home and the school."

Section 1010, *supra*, as amended, provides that except in first and second class districts, the trustees are prohibited from furnishing transportation for 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 miles from the school the child attends, unless any child resides on an established consolidated route." Our statute does not provide that the distance should be computed over "the nearest practicable traveled road" or "the nearest route" or "the nearest traveled highway," as do the statutes of other states.

While it is true that such statutes as the one before us should be liberally construed with a view to promote the beneficent objects in the mind of the legislature (59 C. J. 1105, and cases cited in note 45), when we consider the entire act, we think it is clear that it was not the intention of the legislature to authorize the trustees to give or pay out any of the school's money by way of bonus or profit. The purpose of the act is clear—to provide equal opportunities for education by compensating the pupil for the expenses he is put to in reaching the schoolhouse.

It is our opinion, therefore, that

where a private road is available, which is safe and otherwise practicable for travel, the distance traveled over such private road should be used in computing the distance fixed by the statute. If, however, in the case to which you refer, travel over such private road is prohibited by the owner thereof, or if such private road is, or should become impracticable or hazardous for travel, we think that in such case the distance should be computed by the nearest accessible road. (Peterson v. School District, 246 N. W. 723; Purkeypyle v. School District, 275 Pac. 146; Eastgate v. Osago School District of Nelson County, 171 N. W. 96; Pagel v. School District, 199 N. W. 67; 56 C. J. 834; see also Opinion No. 28, rendered by this office January 22, 1935.)