

Opinion No. 48.**Schools—Pupils, Support in
Another County.**

HELD: So long as the county of the pupil's residence is maintaining its school system, the parent is not authorized to move to any other county, to take his children with him, and then to demand payment for their sustenance from the school district of the former county.

February 20, 1935.

Mr. J. H. Higgins
County Attorney
White Sulphur Springs, Montana

We have your letter of February 13, requesting the opinion of this office on the following statement of facts:

"That the father of this child is a resident of Meagher County, but he is placer mining in Broadwater county, and his child is going to school in Broadwater County, and the father is demanding his allowance in the sum of \$15.00 per month, in order to pay the child's board."

You wish us to advise you if the trustees in question are authorized to pay the claims presented by the father.

Section 1010, R. C. M. 1921, as amended by Chapter 102, of the Session Laws of 1929, provides that whenever the trustees of a school district deem it for the best interest of the district and the pupils thereof they must under certain conditions spend moneys belonging to the district for the transportation of pupils from their homes to the school, or for their board, rent, or tuition while attending school in their own or some other district.

Our Supreme Court has held that this beneficent statute is constitutional (State ex rel. Stephens v. Keaster, 82 Mont. 126, 266 Pac. 387), but it has never held that the assistance authorized by the statute is to be given as or in lieu of charity. The criticism that the various units of American government are becoming paternalistic may be justified in some instances, but we do not believe that the courts would hold that Section 1010, supra, is intended to relieve the parents of the primary obligation to provide for the support and education of their children. (Section 5833, R. C. M. 1921).

As long as Meagher County is maintaining its school system, we can find no law on the statute books authorizing a parent to move to any other county in the State, to take his children with him, and then demand payment for their sustenance from the school district in Meagher County. We would respectfully suggest that you advise the Board accordingly.