

Opinion No. 161.**Schools and School Districts—
Transportation.**

HELD: Neither District nor State school transportation funds, may be used for paying transportation of children attending schools outside the State of Montana.

September 21, 1937.

Miss Ruth Reardon
State Superintendent of
Public Instruction
The Capitol

My Dear Miss Reardon:

We have your letter asking for our opinion upon the following facts.

A school in Garfield County closed and the children were sent elsewhere. Fifteen dollars was to be paid for the first child and five dollars for each additional child, per month, for transportation. After entering into this agreement, a party named Bigelow moved out of the state, to Tacoma, Washington, and sent his children to the schools in the State of Washington. You advise us that this party has since returned to the district, and asks that transportation payment be made to him.

It may be concluded from your letter that Mr. Bigelow and children retained their residence in Garfield County, Montana, and in the school district at said place.

The question involved is whether or not transportation funds can be paid to Mr. Bigelow for his children, who attended schools out of the State of Montana.

Section 1200.1 provides, among other things, that a uniform system of free public schools, sufficient for the education of and open to all of the children of school age, shall be established and maintained throughout the State of Montana; that the state shall contribute for the transportation of pupils residing three or more miles distant from a public school one-half the cost of such transportation; and that 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.

The above section has reference to the state's share of the cost of transportation, and the language is explicit and definite in reference to the state transportation funds, that the same shall be paid for the transportation of pupils to and from the public schools of the State of Montana. Said section, in itself, expressly negatives the payment of state transportation funds for children attending schools out of the State of Montana. The transportation funds of the State of Montana are to be used in maintaining the public schools within the State of Montana, and it is obvious that the same can have no reference to the schools in another state.

Section 1010, among other things, provides: "That the trustees of any school district within the State of Montana, when they deem it for the best interest of all pupils residing in said district, may close their schools and send the pupils to another district, or districts * * *." This section further provides "that the trustees of said school districts are authorized to spend any moneys belonging to their districts for the purpose of paying for transportation of pupils from their homes to the public schools maintained in such district, including any child who may attend any school other than a public school, on the condition that such child attending any other than a public school of such district, shall pay his proportionate share of the cost of such transportation." Under Section 1010, the trustees of the district, when they deem it for the best interest

of such district, and the pupils residing therein, that any of such pupils should be sent to a school in their own or some other district, must expend any moneys belonging to their district for the purpose of either paying for the transportation of such pupils from their homes to the public schools of such district, or for their board, rent, or tuition while actually attending such school. Said section further provides: "That when a district is relieved of the necessity of supporting any school by the fact that all, or a part of the children residing in the district are being provided with schooling in another district, it shall be the duty of the trustees in the district holding no school to assist in the support of the school which the children of their district are attending, in proportion to the relation the number of children from their district attending school in another district bears to the total number of children enrolled in the school in the other district."

It may be observed that in the above section all of the provisions relating to the closing of school and sending the children to another district refers to schools and school districts within the State of Montana. Whatever authority the school districts may have authorizing them to pay transportation is that authority found in Section 1010 and Chapter 93 of the R. C. M. 1935; and there is no statute authorizing the districts to pay for children transported in another state. It is not a question of residence, although it may be conceded that Mr. Bigelow retained his residence in said district in Garfield County. It is simply a question as to whether or not, under the constitution and the statutes, public moneys may be expended to pay for transportation for children in another state. Our school funds can only be used to maintain the public schools of this state and cannot be used, directly or indirectly, in support of the schools of another state.

Therefore, it is my opinion that neither the district nor the state transportation funds can be used for paying transportation for Mr. Bigelow's children, even though said children retained their legal residence in Garfield County.