

**Opinion No. 170.****Schools and School Districts—Transportation Schedules—Alteration of.**

HELD: 1. The schedules provided in Section 1010, R. C. M. 1935, apply to districts maintaining schools as well as to those having closed schools.

2. Schedules outlined in Section 1010 may not be altered without the approval of the County Superintendent.

3. No particular form of approval of an alteration in schedule is required, but it must affirmatively appear that such approval has been given; mere silence on the part of the County Superintendent does not constitute approval.

4. One entitled to transportation has a claim against the district.

October 8, 1937.

Miss Ruth Reardon  
State Superintendent of  
Public Instruction  
The Capitol

My Dear Miss Reardon:

You have submitted three questions to this office for my opinion.

1. "Is the schedule outlined in Section 1010 of the school laws, subject to modification as noted, applicable to districts maintaining a school as well as to districts that have closed their schools?"

Section 1010 provides:

"Transportation of pupils. That the trustees of any school district in

the State of Montana, when they shall deem it for the best interest of all pupils residing in such district, may close their school and send pupils of the district to another district or districts and for such purpose are hereby authorized to expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their district to such other district or districts as hereinafter provided, and for the purpose of paying their tuition. Whenever the trustees of any school district in the State of Montana deem it for the best interest of such district and the pupils residing therein they are hereby authorized to expend any moneys belonging to their district for the purpose of paying for the transportation of pupils from their homes to the public school or schools maintained in such district including any child, or children, of such district who may attend any school other than such public school therein, on the condition that such child, or children, attending any other than a public school of such district shall pay their proportionate share of the cost of such said transportation so that the transportation of such pupil, or pupils, attending any school other than a public school shall not be a charge or expense to such district, as hereinafter provided; provided, however, that in the letting of the contract for the transportation of more than five (5) pupils on a single transportation route, the trustees of school districts shall advertise for bids for transportation of such pupils in one issue of the county paper having the largest circulation in such district at least fifteen (15) days prior to the letting of contract, and in the event that there is no newspaper published in the county, then three (3) notices calling for bids shall be posted in three (3) separate and conspicuous places in the district and provided that the contract for such transportation shall be let to the lowest responsible bidder and suitable bond be furnished by contractor, 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. 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, they 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 school or schools of such district or for their board, rent or tuition while actually attending such school, provided that if there are five (5) pupils or less, then the following schedule shall apply: The following schedule shall also apply in all cases of transportation of five (5) or less children:

Three (3) to four (4) miles one (1) child thirty-five cents (35¢) per day, each child additional ten cents (10¢) per day.

Four (4) to five (5) miles one (1) child forty-five cents (45¢) per day, each child additional twelve and one-half cents (12½¢) per day.

Five (5) to six (6) miles one (1) child fifty-five cents (55¢) per day, each child additional fifteen cents (15¢) per day.

Six (6) to seven (7) miles one (1) child sixty-five cents (65¢) per day, each additional child seventeen and one-half cents (17½¢) per day.

Seven (7) to eight (8) miles one (1) child seventy-five cents (75¢) per day, each additional child twenty cents (20¢) per day.

Eight (8) to nine (9) miles one (1) child seventy-five cents (75¢) per day and each additional child twenty-five cents (25¢) per day.

The board of trustees with the approval of the county superintendent may alter this schedule if they deem it for the best interest of the children and taxpayers of the district. If, in the judgment of the county superintendent and trustees of said district, there is any evidence of fraud in securing an allowance for board,

transportation, house rent or tuition of an applicant having purposely changed his residence or otherwise having contrived to secure assistance, no district funds shall be allowed for any of the purposes above enumerated.

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. No district shall be entitled to share in the county apportionment if trustees refuse to comply with the above requirement when they are thus relieved of the necessity of providing any school."

Section 1010 provides that the schedule for transportation shall apply in all cases of transportation of five or less children. Where there are more than five children on one transportation route the schedule in said section has no application, and such transportation shall be let to the lowest responsible bidder. When the statute used the language "all cases" it used sufficiently comprehensive language to include districts not only operating their own schools, but also districts wherein the schools have been closed and the children are being sent to a school in another district. The statute is definite and clear, and no ambiguity exists therein, and for that reason the statute lends its own interpretation.

A different rule is used in computing the mileage for closed and unclosed schools, and the three mile and two and one-half mile limitations have no application to a district where the children are being transported to a school in another district. Where the school has closed and the children are being transported to a school in another district, the transportation of all the children shall be measured from the children's home to the school in the other district, regardless of the distance said children may live from the

school in their own district. One reason for a different rule is that when a school is closed, and the children are sent to a school in another district, a greater saving will accrue to the district through the dispensing with upkeep and the displacement of a teacher.

If the children are to attend school in another district, they should be placed in nearly as good a position, as far as convenience is concerned, as they were prior to the closing of the school in their own district. When the children are transported to a school in another district they are subjected to greater inconvenience, and it is only reasonable to believe that the legislature intended to offset such inconvenience by allowing, to the children from the closed district, larger transportation allowances.

The above schedules and rules referred to have application to the schedules of transportation for the districts, and not the schedules upon which the State transportation cost is based.

Section 1010 prescribes the schedule and rate for districts.

Chapter 112 of the 1935 Codes prescribes the schedule and authority for the disbursement of state transportation, and is wholly independent of Section 1010.

Subdivision (c) of Section 1200.1 provides among other things: "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 shall fix and promulgate a uniform schedule of rates for the transportation of pupils to and from the public schools in 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."

The State Board of Education, under the authority of the above statute, at one time adopted the schedule set forth in Section 1010. This is now changed.

In ascertaining the amount of the state apportionment, the same rule shall apply to closed as to unclosed schools, as distinguished from the district transportation schedules.

Subdivision (c) of Section 1200.1 refers to transportation where the child resides three or more miles from the public schools of the state. In the

language of said statute no differentiation is made between closed and unclosed schools. The transportation is in lieu of school, and when the statute uses the words, in paragraph (c) of said section "public schools," it pertains to closed schools as well as to operating schools. Where the district closes its school and sends its pupils to a school in another district, the rate of said transportation for children residing three or more miles distant from the school shall be from the child's home to the closed school in its district and not from the home of the child to the school in another district.

The taxpayers in the district secure an advantage in their maintenance cost by closing their schools and sending the children to a school in another district, but this advantage should not be used to the disadvantage of the state.

2. "If the trustees of a district pay a lesser amount than that provided for in the schedule, and this payment is not approved by the county superintendent, does a patron have a just claim in demanding that he be paid in full according to the schedule?"

Section 1010 provides that the Board of Trustees, with the approval of the county superintendent, may alter the schedule if it deems it for the best interest of the children and taxpayers of the district. The board of trustees, in order to alter it, must have the approval of the county superintendent, and if the trustees pay a lesser amount than that provided for in Section 1010, and this payment has not been approved by the county superintendent, then the schedule has not in fact been altered, and the patron is entitled to be paid the full amount as provided in said schedule.

3. "Does silence give consent in considering what constitutes approval on the part of the county superintendent? We mean by this that the county superintendent knows that a school district is paying less than the schedule and yet the county superintendent does not take any action in the matter."

Mere silence does not constitute approval. The statute requires that the county superintendent approve any alteration of said schedule made by the Board of Trustees. It must be implied, from the language, that it is

necessary that the matter be brought to the superintendent's attention, and that he has approved the same by some active, and not passive, action. No particular form of approval is required, but it certainly must be affirmatively shown that he has approved the alteration. Silence, contrary to the usual rule, implies dissent rather than assent in this situation.