

Opinion No. 187.**Schools and School Districts—Trustees—Tuition—Rate for Non-Resident Pupils.**

HELD: When school trustees close their school under the provisions of Section 1010, R. C. M. 1935, they are authorized to pay to the district where their children are attending, a share of the cost of maintaining such school, based on the proportion in relation to the number of children of their district bears to the total number of children enrolled in the other school.

2. School trustees, under Section 1015-3, R. C. M. 1935, have authority to charge tuition for non-resident pupils, but such tuition charged must be reasonable.

3. School trustees may charge only one rate for non-resident pupils; either that fixed by Section 1010, or by 1015-3; but not both rates.

November 2, 1937.

Mr. John J. Cavan
County Attorney
Jordan, Montana

My dear Mr. Cavan:

You have submitted to this office the question as to what extent the trustees of a closed school can appropriate funds of their district to assist in the support of a school of another district where the children from the closed school have been sent.

Section 1010, among other provisions, 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 where 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.”

Subdivision 3 of Section 1015 provides:

“Every school board, unless otherwise especially provided by law shall have the power and it shall be its duty: To determine the rate of tuition of non-resident pupils.”

The designated portions of the above statutes must be read together in their application to your particular question.

Section 1010 authorizes the trustees of a district to close their schools, under certain conditions, and send their children to a school in another district, and when such is done the trustees of the closed school are authorized to assist in the support of the school where the children are sent, 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. In other words, Section 1010 defines and circumscribes the extent to which the trustees of the closed school may appropriate the funds of their district in payment towards the cost of the school where the children have been sent.

Subdivision 3 of Section 1015 authorizes the district of the school where the children have been sent to determine the rate of tuition chargeable for the children of the closed district.

In the case of *Peterson v. School Board*, 73 Mont. 442, it is held that the trustees are acting in a quasi-judicial capacity, and that the board has discretion in fixing the amount of tuition charges. Although within the discretion of the trustees of the functioning school to admit children from a closed school, yet, having done so, we believe that the amount of tuition chargeable cannot be arbitrary or unreasonable, and that the closed school shall bear its proportionate share of the cost of maintaining the school where the children have been sent. Whether the funds paid by the closed school to the functioning school are paid under the guise or form of tuition, or maintenance, or in whatever character it may be styled, or under Section 1010 or 1015 is immaterial. The total amount to be paid by the closed school to the functioning school shall be an amount in relation to the whole

cost of operating the functioning school as designated in the language found in Section 1010. In other words, the functioning school cannot collect its proportionate share, as defined in Section 1010, from the closed schools, and at the same time charge the closed school additional amounts for tuition.