

**Opinion No. 213.**

**Schools and School Districts—Transportation — Indian Children.  
Federal Obligation.**

**HELD:** 1. No discrimination shall be made in payment of the State school

transportation funds for Indian children.

2. The State should seek Federal reimbursement for expenditure of transportation funds for Indian children.

December 16, 1937.

Miss Ruth Reardon  
State Superintendent of  
Public Instruction  
The Capitol

My Dear Miss Reardon:

You have submitted to this office the question as to whether or not children of Indian parentage are to participate in the distribution of the State school transportation money.

Section 1200.1 provides:

"Uniform system of free, public schools — state support — schedule of state contribution. A uniform system of free, public schools, sufficient for the education of, and open to, all the children of the state, of school age, shall be established and maintained throughout the State of Montana; and to carry on and support a minimum, foundational, educational program therein, the State of Montana shall provide therefor, and contribute thereto, revenue upon the following schedule:

(a) For every elementary school, classroom unit in the state, as such unit is hereinafter defined, the sum of five hundred dollars (\$500.00) per teacher, and, in addition, of twelve cents (12¢) per pupil per day of attendance during the last completed school year.

(b) For every junior and senior high school, classroom unit in the state, as such unit is hereinafter defined, the sum of six hundred dollars (\$600.00) per teacher and of fifteen cents (15¢) per pupil per day of attendance during the last completed school year.

(c) 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 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

of 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 laws of Montana guarantee a system of free public schools for the education of, and open to, all of the children of the state, of school age. No discrimination is made as to race. An Indian child of school age, whether its parents have received a patent to their land or not, has equal rights with all other children of school age to attend the public schools. In according this right to the Indian child, the state must grant equal consideration to the use of all of its school facilities, which includes transportation and the cost thereof. The right to the use of these facilities, including transportation, is not based upon the amount of taxes the parent may pay, and neither our Constitution nor statutes establish such a condition. Sections 1 and 7 of Article XI of the Constitution of Montana provide:

Section 1. "It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

Section 7. "The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years."

The court said in the case of *State ex rel. Henderson v. Dawson County*, 87 Mont. 122, at page 132:

"\* \* \* The policy of this state has always been to provide free and liberal education for the children and youths residing within its borders, from the lowest elementary branches of instruction up to and including a full university course. To this end our Constitution declares that educational institutions shall be established and supported by the state (Sec. 1, Art. X, Constitution of Montana), and imposes upon the legislature a positive duty to 'establish and maintain a general, uniform and thorough system of public, free, common schools' which 'shall be open to all children and youth between the ages of six and twenty-one years' (Secs. 1 and 7, Art. XI)."

My conclusions herein do not mean that the federal government is released by the State of Montana from its obligation to educate the Indian children in the State of Montana. I am advised by Mr. R. C. Haight, Deputy Superintendent of Public Instruction, that the federal government is now paying a portion of such transportation cost incurred in the transporting of Indian children to public schools, and further, that the government is willing to increase its disbursement, in this respect, to the state.

Section 5668.15 contemplates that the state will receive funds from the federal government for the education of Montana Indians, and the State Board of Education by said section is empowered and directed to administer said funds, but such power conferred upon the Board of Education does not empower said board to restrain your office from certifying to the State Treasurer, and the treasurer from disbursing to the counties, the state cost of transportation to our public schools for Indian children. However, the State Board and your department should press the claim of the State of Montana against the federal government for reimbursement of such expenditures.