

Opinion No. 228.

Schools and School Districts—Transportation—School Trustees.

HELD: A school trustee is entitled to receive payment for transportation of his children, when transportation has been authorized in the district.

January 3, 1938.

Mr. Rex Haight
Deputy Superintendent of Public Instruction
The Capitol

Dear Mr. Haight:

You have submitted the following question:

“Can the parent, as a member of the board, legally receive payment for the transportation of his children?”

Section 1010, R. C. M. 1935, authorizes the school board to expend money for the transportation of pupils from their homes to the public schools. Section 1016 provides:

“It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in the erection of any schoolhouses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustees, except as hereinbefore provided. No board of trustees shall let any contract for building, furnishing, repairing, or other work for the benefit of the district, where the amount involved is two hundred and fifty dollars, or more, without first advertising in a newspaper published in the county for at least two weeks, calling

for bids to perform such work, and the board shall award the contract to the lowest responsible bidder; provided, however, that the board of school trustees shall have the right to reject any and all bids.”

Section 1010 in itself makes no discrimination as to trustees' children. All of the children are to be treated alike and accorded the same privileges. The transportation is for the direct welfare and benefit of the child, and indirectly for the benefit of the parent. Our laws provide for a uniform system of free public education, accessible to all children of school age in the state. The children of parents who are trustees are not excluded from such privileges. Section 1016 does not exclude the trustees from participating in, or receiving the benefits in every contract, but only in those matters expressly enumerated therein, and transportation is not incorporated within said section. If the trustee is transporting his own children, he is not rendering such service as a trustee but as an individual. When the statute refers to services rendered as a trustee, it has application more or less to a situation where the trustee would be charging for services performed during a meeting of the board. The purpose of prohibiting a trustee from having an interest in certain school contracts is to restrict an obvious incompatible situation. As far as transportation of his own children is concerned, such incompatibility does not exist.

In third class school districts a fixed rate of transportation is established which may be altered by the trustees, if approved by the county superintendent. Thus a check is laid upon trustees in a third class district. In districts of every class the rate of transportation would be the same for all the children of the district, whether the parents were members of the board, or otherwise. Thus the trustees' children would not receive any greater benefits than the children of other parents within the district.

I do not find any conflict between Section 1010 and Section 1016, but if there is any conflict, a later statute supercedes an earlier statute, and Section 1010 would prevail. If a trustee is prohibited from receiving transportation for his children, there may

be some small school districts where it would be impossible to find persons who would act as such officials, and the district could not function.

We are unable to agree with the opinion found in Volume 9, page 243, Opinions of the Attorney General.

Therefore, it is my opinion that a member of the school board is entitled to receive payment for the transportation of his children from his home to the public schools in his district, where transportation has been authorized in the district.