

Opinion No. 34.

Schools—School Districts. Transportation.

HELD: Where one of two schools in district are closed by order of the board, and the other school designated by the board as the school for attendance, parents have the right to send children to school not designated, but the board need pay only such sums for transportation as would be required for attendance at school designated.

February 4, 1937.

Mr. Homer A. Hoover
County Attorney, McCone County
Circle, Montana

Dear Mr. Hoover:

You have submitted to this office for an opinion, the following matter.

The Board of Trustees of School District No. 22, your county, deeming it to be for the best interest of such district, and the pupils residing therein, have closed the Kimmel School. The board has instructed Mr. Dahl to send his children to the Turner School in School District No. 10, your county, which school is 2½ miles from the Dahl residence. You state in your letter, that the Turner School, in another district, is willing to accept the children and charge no tuition, but desire a transfer of the state apportionment, which transfer is satisfactory to the school board of the district effected; that Mr. Dahl refuses to send his children to the Turner School and is sending them to another school in District No. 22, the

same being the district wherein he resides and which is about five miles from his residence. The Turner School and the school to which Mr. Dahl is now sending his children are conducted as average rural schools and from that standpoint there is no choice.

You inquire as to whether or not Mr. Dahl can disregard the order of the school board and send his children to a school in another district, and secondly, is Mr. Dahl entitled to receive the state transportation for his children attending school in his own district.

Section 1056 R. C. M., 1935, provides:

"Every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district * * * ."

Section 1061, R. C. M., 1935, requires that school shall be in session not less than six months during any school year.

Section 1010, R. C. M., 1935, provides that the trustees of any school district in the State of Montana, when they shall deem it for the best interest of the pupils residing in such district, may close their school and send pupils of the district to another district, etc.

The language as used in the beginning of this section has reference to a situation where no school is left remaining open in the district, and in that event authorizes the trustees to send the children to a school in another district. However, reading further in said section and at the bottom of page 666 of vol. 1 of 1935 Code, I find this language.

"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 in monies, etc."

Mr. Dahl has the legal right to disregard the order of the board and send his children to another school in his own district.

However, it is within the sound discretion of the Board of Trustees to close one of the schools in their district and authorize the expenditure of money for transportation for pupils

attending a school in another district. It appears that the Turner School is a distance of $2\frac{1}{2}$ miles from the Dahl residence. The school where the Dahl children are at present attending is five miles away. If the Dahl children continue to attend school where they are now attending, they need not be allowed a larger sum than what it would cost to transport them to the Turner School, or, in other words, they should be allowed the equivalent cost of what the board would pay them if they were attending the Turner School.

As you have suggested, there is a distinction as to whether or not the Dahl children have the right to attend the school they are now attending, and, whether or not if they do, the board is compelled to pay the five mile transportation cost. The problem of law as confronting you, has been settled in the case of *State ex rel. Robinson v. Desonia*, 67 Montana 201.

Therefore, it is my opinion, that Mr. Dahl has the right to send his children to another school in his own district, but the board need not expend as transportation for his children, a greater sum than it would expend if his children attended the Turner School, which is in another district, and which is closer to the Dahl residence than where his children are now attending.