

Opinion No. 153.**Schools and School Districts—High School Students—Transfers—Apportionments—Budgets.**

HELD: 1. Transfer of high school apportionments to another district, county, or adjacent county in another state being authorized by statute, is in conformity to the constitution.

2. Eligible high school students who make application on or before Sept. 1 must be transferred.

3. The apportionment for the current year must be transferred to the school of the student's attendance, even though there were no transfer students or transfer budgets for the preceding year.

4. No authority exists for transferring students or apportionments, where application is made subsequent to Sept. 1.

5. Transportation costs are a part of the average amount budgeted per eligible high school student for maintenance and operating costs.

October 17, 1939.

Mr. Walter T. Murphy
County Attorney
Superior, Montana

My Dear Mr. Murphy:

You have submitted the following questions for my opinion:

Do Sections 4 and 5 of Chapter 217, Laws of 1939, amending Sec. 1262.81 and Sec. 1263.8, R. C. M., 1935, contravene Sections 4 and 11 of Article XII and Section 27 of Article III of the Constitution?

Where there were no transfer students in the county for the year 1938-1939, and no applications for transfer of students or funds to another county until after the final budgets for the 1939-1940 year were adopted, and a levy fixed, and consequently no trans-

fer budget set up, must transfer of funds for the current year be made to another county for students applying for transfer after the final budget was approved but before September 1, 1939?

If such transfers cannot be made this year, then must a budget be submitted next year sufficient to cover the transfers accrued for this year, and such accrued sums due for transfers paid out of the next year's budget?

Where application for transfer of funds and to attend high school in another county is not made until after September 1, 1939, must any transfer of funds to the other county be made at all, even though the student attends high school in the other county?

Under Section 5 of Chapter 217, Laws of 1939, should the cost of transportation or of board and lodging paid out by the various high schools be included in arriving at the "average amount budgeted per eligible high school pupil for maintenance and operating purposes," or should transportation or board and lodging costs be deducted before computing the average?

Section 4 of Chapter 217, Laws of 1939, makes it mandatory upon the county superintendent to transfer an eligible high school student to an accredited high school within or without the state where an application has been properly filed on or before September 1. No apportionment shall be paid in another state, except where such attendance is in a county adjacent to a county of the student's residence. Section 5 of said chapter provides that the amount apportioned and which must be transferred shall be an amount equal to the average amount budgeted per eligible high school pupil for maintenance and operation purposes. Section 4 of Article XII of the constitution prohibits the legislature from levying taxes upon the property in any county or subdivision thereof but invests the corporate authority with such power. Chapter 217 does not impinge upon the above constitutional provision because the corporate authority has not been divested of its power to levy and collect taxes. Under authority of Section 1, Article XI of the constitution it becomes the duty of the

legislature to establish and maintain a general, uniform and thorough system of public, free, common schools. Section 5, Article XII of the constitution authorizes taxes for school purposes to be levied on all subjects and objects of taxation. Section 11, Article XII, requires taxes to be levied and collected by general laws and for public purposes only. Such taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Reading all of these constitutional provisions together, and construing them in relation to each other, it seems clear that the legislature had the right to enact Chapter 217 into law for the purpose of extending additional school facilities to the pupils attending the public schools. To meet the expense of such service, the corporate power and not the legislature under Chapter 217 is invested with the power to levy and collect the necessary taxes. Such taxes are uniform within the school district or county and affect all property situated therein alike. Such taxes are levied and collected to meet an obligation of the district, that is, to educate the children residing therein and not to support the schools in another district, county, or state.

The student has until September 1 to make application for transfer. Transfer of the student and his apportionment cannot be made after that date. An application by the student if properly made on or before September 1 is mandatory. The final budget is adopted on the second Monday in August. The number of transfer pupils used for budgeting purposes shall be the number whose attendance was authorized for the year preceding. Likewise, Section 5 of Chapter 217 authorizes a budget for an amount equal to the average amount budgeted per eligible high school pupil for maintenance and operating expenses. While it is true that the number of transfer pupils used for budgeting purposes shall be the number whose attendance was authorized for the year next preceding, yet such provision of the statute does not alter or detract from the fact that every eligible pupil residing within the district the preceding year was taken into account in the formation of the budget determining

the average per pupil cost. Having budgeted upon the basis of the preceding year, in determining the average per pupil cost for maintenance and operation, it follows that if such students are transferred at any time on or before September 1 their apportionments must likewise be transferred. It would be an idle act to permit the transfer of the student after the final adoption of the budget and on or before September 1 if the apportionment could not be transferred. Where the student has been included in the budget made upon the basis of the preceding year for the purpose of determining the average cost for maintenance and operation, then the pupil's apportionment must be transferred irrespective of whether or not the school had any transfer students the previous year or any transfer budget set up or whether or not the application was made on or before the final adoption of the budget, if made on or before September 1. The transfer of a student and his apportionment, if he has been taken into consideration in the formation of the budget in relationship to determining the average cost for maintenance and operation, does not alter or change the general budget but merely provides for the transfer of funds which have already been budgeted.

Transportation costs to the district are a part of the total maintenance and operation expenditure of the district and as such become a part of the average cost referred to in Chapter 217. Transportation costs are included in paragraph 14, subdivision 2, Part I of the High School Budget and amongst other costs are placed against estimated receipts as provided for in Part II of said budget. In other words, the amount needed to pay "transportation may be included in the amount to be raised by the special county tax for the maintenance of high schools."