

## Opinion No. 75.

**Schools and School Districts—Budgets  
—Transfer Funds.**

HELD: Funds budgeted for transfer students must be equally apportioned amongst all such students, regardless of time of transfer.

June 8, 1939.

Mr. J. W. Lynch  
County Attorney  
Fort Benton, Montana  
My dear Mr. Lynch:

You have submitted to this office for my opinion the following question:

"The budget being based upon the number of children authorized to attend school outside of the county in the preceding year which, under the law, must be submitted on or before the third Monday in July, then the pupil having until September 1st in which to make application for such transfer, and the number of pupils being greater in number for the present year than for the preceding year, upon which the budget is based, must the average amount per pupil be paid to only those listed in the budget; or, paid to the various high schools in accordance with the number attending such high schools in the preceding year, upon which the budget will be based; or, is such total, as included in the budget in the case of an increase in the number of transfer pupils, to be paid apportionately to the various schools which the pupils will attend during the coming school year?"

Section 4, Chapter 217, Session Laws of 1939, provides that the county superintendent of schools must authorize the transfer of an eligible high school student, when proper application is made on or before September 1. Section 5 of said chapter requires the county superintendent, on or before the third Monday in July, to prepare a budget for such expense. The basis of such budget "shall be the number (of transfer students) whose attendance was duly authorized by law for the year next preceding."

Our laws guarantee a uniform system of public schools, accessible to all children between the ages of six and twenty-one years. (Article XI of the

Constitution; Section 1204, R. C. M., 1935; *McNair v. School District*, 87 Mont. 423.) These laws necessarily imply that school funds be apportioned without discrimination. (*Word v. Flood*, 48 Calif., 36.)

If the number of transfer students, on or before September 1, exceeds the number for the preceding year, the funds budgeted must be equally apportioned amongst all the students, including the additional number of students transferred for the current year. No emergency budgetary provision is contained in Chapter 217, *supra*, and none is therefore authorized. While some schools will have an increase in transfer students over the preceding year, others will have a decrease. An increase in any one year will work a hardship upon the school for that particular year; a decrease will result in a benefit. Of course, decrease or increase variations over a period of several years in a particular school should result in an average equitable apportionment of the funds budgeted.