

No. 111

**SCHOOL TRANSPORTATION—SCHOOL DISTRICTS
AND COUNTY HIGH SCHOOLS—TRUSTEES—
BUDGET—COUNTY COMMISSIONERS**

Held: The furnishing of transportation or services in lieu thereof is in the first instance in the discretion of the Board of Trustees and is not mandatory. In event Board of Trustees determines to furnish transportation, then it becomes mandatory that it provide a budget to cover the same. It then becomes mandatory for the Board of County Commissioners to make such levy or levies as may be necessary.

May 7, 1941.

Miss Elizabeth Ireland
Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have submitted the following questions:

1. Is it mandatory that Boards of Trustees of school districts provide in their budgets for transportation of all eligible pupils in their respective districts or in lieu of transportation furnish supervised correspondence study, supervised home study, room, rent or board, not paid by the State, under Chapter 152, Laws of 1941?
2. Is it mandatory that Boards of Trustees of district high schools and county high schools provide in their budgets for all costs of transportation of all eligible pupils in their respective districts or in lieu of transportation furnish supervised correspondence study, supervised home study, rent, room or board not paid by the State under Chapter 152, Laws of 1941?
3. What duty devolves upon Boards of County Commissioners in relation to the foregoing questions?

In discussing your inquiries, we will answer them together as they are all parts of the same Act. Turning to Chapter 152, Laws of 1941, which is the Act applicable to your questions and which repeals Section 1010, Revised Codes of Montana, 1935, we find that Section 1 of said Chapter 152 provides as follows:

"Section 1. Boards of Trustees to Furnish Transportation. The Boards of Trustees of any school district or county high school within the State of Montana shall have the power to furnish transportation to and from school for all pupils residing within their district, who are enrolled in the public schools of their district, and who reside three (3) or more miles distant, over the nearest practical route, from a public elementary or secondary school. Provided, that, school boards may in lieu of transportation furnish supervised correspondence study, supervised home study; room, rent or board; but any sum expended in lieu of transportation shall not exceed the per pupil cost set up by schedule in Section 7 of this Act."

It will be noted the provision for furnishing transportation by Boards of Trustees of school districts and county high schools in Montana is not compulsory, but it is discretionary with the board of any school district or county high school as to whether or not such transportation is to be furnished. In the event the Board of Trustees determines to exercise the power conferred upon it and to furnish transportation as provided in said chapter, a resolution to that effect will be passed.

After the Board of Trustees of a school district, district high school, or a county high school has passed such a resolution to furnish transportation, then Section 14 of said Chapter provides as follows:

"Section 14. **Budget and Levy for Transportation.** The Board of Trustees of any school district and/or any county or district high school shall have the authority to, and such boards shall provide a budget to cover the transportation or services in lieu thereof, provided for in this Act . . ."

The Board of Trustees of the school district, high school district or county high school having decided to furnish transportation, it then becomes mandatory upon the Board of Trustees under the last above quoted part of Section 14 to provide a budget to cover the transportation or services in lieu thereof provided for in the Act.

The next provision of Section 14, Chapter 152, follows the foregoing quotation and is as follows:

"And the Board of County Commissioners shall have the authority to and shall make such levy or levies as may be necessary to raise sufficient moneys to pay any balance of the cost of transportation as set up in the budget which may remain after the estimated reimbursement from the state funds for transportation has been deducted. Provided, that, the levy for high school transportation shall not be considered a part of the maximums for making high school budgets set forth in Section 1263.5 of the Revised Codes of Montana, 1935, as amended, and shall not be a part of the county-wide levy provided for in Section 1263.11 of the Revised Codes of Montana, 1935, as amended, unless the trustees making such budget so desire and the Board of County Commissioners find that such extra levy is not needed to raise the amount necessary to cover the budget for all purposes including transportation."

The last above quoted language of the Act is also mandatory on the Board of County Commissioners and they shall make such levy or levies as may be necessary to raise sufficient moneys to pay any balance of the cost of transportation as has been set up in the Board of Trustees' budget which may remain after the estimated reimbursement from the State funds for transportation has been deducted.

Section 13 of the Act provides for the manner of reimbursement of each school district, district high school or each county high school, eligible and participating under the Act, from the state public school general fund.

In connection with the foregoing, it will be remembered that Section 7, part (7), provides an exception, in that where transportation is provided within a city, by the Board of Trustees, for the reasons therein set forth, then in that event there shall be no reimbursement from the State.

It is also pointed out that another exception is made in Section 13 of the Act as follows:

"Under extraordinary conditions upon the recommendations of the County Superintendent and Board of County Commissioners, the State Superintendent of Public Instruction and the State Board of Education may permit the payment of one-half ($\frac{1}{2}$) of the actual cost of transportation as provided in this Act even though the school district or county high school does not provide the other half . . ."

Therefore, it is my opinion the Board of Trustees of any school district, high school district or county high school has the power and authority to furnish transportation or services in lieu thereof, as provided in Chapter 152, Laws of 1941, and after such Board has resolved to do so, it then is mandatory on such Board of Trustees to provide the necessary budget as hereinabove explained. Thereafter, in my opinion, it is mandatory on the Board of County Commissioners to make such levy or levies as may be necessary to provide sufficient money to pay any

balance of the cost of transportation after the estimated reimbursement from the State funds has been deducted and as provided in Section 14 of the Act above set forth.

Sincerely yours,

JOHN W. BONNER
Attorney General