

No. 182

COUNTY SUPERINTENDENT OF SCHOOLS—TRANSPORTATION—ABANDONMENT OF SCHOOL DISTRICT—SCHOOLS

Held: Where school has not been held in school district for three consecutive years, and school trustees have not provided transportation by omnibus and bonded driver, county superintendent of schools must abandon such district and attach the territory to contiguous district or districts.

July 22, 1941.

Mr. Bert I. Packer
County Attorney
Teton County
Choteau, Montana

Dear Mr. Packer:

You have submitted the following questions:

“(1) In two or more school districts in this County we have but one child of school age in the district who attends school in another district, and the district wherein the parents own property pays money to the parent for rent or board in lieu of transportation. This has

continued for a period of more than three years and no school has been held in that district. Must the County Superintendent abandon and attach it to a contiguous district?

"(2) In one of these instances the father owns a home in Choteau, owns one or two ranches situate in three other districts and claims it is necessary, due to the physical condition of his child, which is the only child in the district, wherein the father has a home ranch, to have him in school in town so that he may have medical care. The father states he maintains a home in town solely for the purpose of this child's attending school, and his actual residence is his ranch and the precinct wherein he is registered to vote. The district has been allowing him money in lieu of transportation. Must this district be abandoned and the property situate therein attached to a contiguous district?"

The answer to your first question will also answer your second question.

Section 970, Revised Codes of Montana, 1935, deals specifically with abandonment of school districts and provides in part:

"Section 970. Abandonment of school districts. He shall attach to contiguous districts territory not a part of any district and he shall have power to declare school districts abandoned when no school has been **actually** held within such district for two (2) consecutive years, if in his judgment there is no immediate prospect of the need of a school, and he **must** declare a school district abandoned when terms of school aggregating at least twelve (12) months have not been actually held in a district during a period of three (3) consecutive years. . . . The abandoned territory shall be attached to a contiguous district or districts. . . ." (Emphasis mine.)

When the county superintendent finds a school district has not actually held terms of school aggregating at least twelve months during a period of three consecutive years, and has not provided transportation as specifically provided in Section 970, Revised Codes of Montana, 1935, then the county superintendent **must** declare such a school district abandoned. The said statutory language is mandatory. The statute then commands the county superintendent further: "The abandoned territory shall be attached to a contiguous district or districts."

In making the exception to the law, the legislative intent is clear to the effect other modes of transportation, such as rent, board and room, paying parents or guardian and providing supervised correspondence study or supervised home study, are not to be considered.

Section 970, Revised Codes of Montana, 1935, is a special statute covering the subject of abandonment of school districts and—as such—is controlling. Chapter 152, Laws of 1941, neither in its title nor in the body of the act purports to deal with abandoning of school districts.

This office has consistently held as above.

Report and Official Opinions of Attorney General, Volume 14, page 141.

Report and Official Opinions of Attorney General, Volume 19, Opinion No. 3.

It is my opinion, under the facts you have presented, the county superintendent has no alternative but to declare such school districts abandoned and attach such abandoned territory to a contiguous district or districts.

Sincerely yours,

JOHN W. BONNER
Attorney General