

No. 228

SCHOOLS AND SCHOOL DISTRICTS—TRANSPORTATION OF PRIVATE SCHOOL PUPILS—DEDUCTIONS FROM TRANSPORTATION PAYMENTS

- Held:** 1. Public school moneys may not be expended for transportation for a pupil attending a private or parochial school.
2. No deductions may be made from payments made by school districts in lieu of transportation.

September 2, 1941.

Mr. T. W. Carolan
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. Carolan:

You have submitted the following questions to this office for opinion:

"(1) Under the new Transportation Law, may public school moneys, either from the district, county or state, be expended for transportation to a student attending a private or parochial school, and

"(2) Where a school is maintained in a district and parents of children resident in that district, but living three miles from the established school therein, decide to send their children to a school in another district, is it permissible for the district paying such transportation to deduct therefrom the amount of state and county apportionment which is payable to the school which the children are attending?"

In answer to your first question, you will notice the title of the so-called "Transportation Act" (Chapter 152 of the Laws of 1941) refers to "Transportation Services for All Public School Pupils Residing Three or More Miles from an Open Public School." Section 1 of the Act, relating to the power of trustees to furnish transportation, refers to pupils "who are enrolled in the public schools." (Emphasis mine.)

Section 1053 of the Revised Codes of Montana, 1935, defines "public school" as follows:

"A public school is a school established and maintained under the laws of this state at public expense and comprising the elementary grades, and, when established, the kindergarten and the high school including all the junior and senior grades of high school work."

If a child were enrolled in a private or a parochial school he would no longer be a "public school pupil" within the meaning of the title of Section 1 of the Transportation Act and would not be entitled to transportation or payment in lieu thereof. It is my opinion public school moneys may not be expended to pay transportation to a student attending a private or parochial school. Under Section 8 of Chapter 152 of the Laws of 1941 provision is made for allowing children attending private school to ride on public school busses, provided the parent or guardian pays the proportionate part of such bus transportation. This clearly indicates no public school money is to be spent for private school pupils either directly or indirectly.

It is not entirely clear from your second question just what state and county apportionment is meant, and, of course, the problem would vary somewhat depending on whether elementary or high school pupils were involved. However, there is no provision in the so-called Transportation Act for any kind of deduction whatsoever from the amount paid as transportation or in lieu of transportation. It is well established the powers of a school district are limited. School districts can exercise no powers

except as are conferred by the law creating them, either expressly or by fair implication. (Jay v. School District No. 1, 24 Mont. 219, 232, 61 Pac. 250; Finley v. School District No. 1, 51 Mont. 411, 415, 153 Pac. 1010; State ex rel. School District No. 4 v. McGraw, 74 Mont. 152, 156, 240 Pac. 812.) The board of trustees constitutes the board of directors and managing officers of the public corporation which is the school district and may exercise only those powers expressly conferred upon it by statute and such as are necessarily implied in the exercise of those expressly conferred. (McNair v. School District No. 1, 87 Mont. 423, 425, 288 Pac. 188, 69 A. L. R. 866; Keeler Bros. v. School District No. 3, 62 Mont. 356, 361, 205 Pac. 217; State ex rel. Bean v. Lyons, 37 Mont. 354, 362, 96 Pac. 922.)

Transportation is paid under Chapter 152 of the Laws of 1941 only by the school district and with school district funds. County or state transportation money comes to the school district for disbursement and does not come to the individual. The same is true with respect to county or state school money for other purposes and from other sources. Transportation money or money in lieu of transportation is paid to parent or guardian and not to another school district and any fiscal adjustments or arrangements between school districts cannot affect the payment of the amount of transportation money to the parent or guardian by the school district wherein the children reside. It is my opinion no deductions may be made from amounts payable as transportation or in lieu of transportation.

If this does not sufficiently answer the second part of your inquiry, I suggest you discuss your problem with Mr. Reeder, your County Superintendent, and with his help submit a question clearly outlining the facts relating to the problem and particularly to the funds and apportionments to which you refer.

Sincerely yours,

JOHN W. BONNER
Attorney General