

No. 254

**SCHOOLS AND SCHOOL DISTRICTS—TRANSPORTATION—PAYMENT FOR HIGH SCHOOL PUPILS ATTENDING SCHOOL IN OTHER COUNTY**

**Held:** When a board of school trustees has determined to furnish transportation and sets up a budget therefor, transportation must be furnished to all eligible pupils—including pupils who may attend high school outside the county of their residence either with or without authorization of the county superintendent.

September 24, 1941.

Mr. D. W. Doyle  
County Attorney  
Pondera County  
Conrad, Montana

Dear Mr. Doyle:

You have submitted the following question:

Certain high school pupils living in a certain county have previously attended high school in another county where they did not reside. There is no high school in the school district in which the pupils reside in the first mentioned county. Should the school district where the pupils reside pay transportation for the pupils attending high school outside the county where they reside?

When high school pupils desire to attend a school outside of the county of their residence, their parents or guardians must make application to their county superintendent of schools before September 1st of the school year and be authorized by such county superintendent of school in order to have the school money budgeted for each eligible high school pupil transferred to the county of attendance, as provided by Section 1262.81 of the Revised Codes of Montana of 1935, as amended by Section 4 of Chapter 217 of the Laws of 1939.

The subject of transportation is covered in Chapter 152 of the Laws of 1941. Where the board of trustees of any school district determines to furnish transportation to eligible pupils, then transportation must be furnished to all eligible pupils residing within their district, 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 the schedule in Section 7 of the transportation act, except where a school is closed as provided in subdivision (8) of said Section 7.

It has been held by this office the so-called transportation act is not mandatory but permissive (No. 111 of Volume 19, Report and Official Opinions of the Attorney General.) However, once the trustees exercise the power to furnish transportation, it must be furnished to any eligible pupils as is apparently contemplated by Section 1 and Section 9 of Chapter 152, Laws of 1941.

The amendments to the sections included in Chapter 217 of the Laws of 1939, relating to the attendance of high school pupils outside the school districts and counties in which they reside, do not relate to the subject of transportation and the provisions of Chapter 217 of the Laws of 1939 and of Chapter 152, Laws of 1941, do not conflict. A high school pupil whose attendance is authorized under Chapter 217 of the Laws of 1939 is eligible to transportation if he comes within the meaning of the provisions of Chapter 152, Laws of 1941, and particularly the provisions of Sections 1 and 9 thereof.

It is possible, of course, some high school pupil eligible to receive transportation may attend high school outside the county of his residence without having been authorized, as required by Section 1262.81, as amended by Section 4 of Chapter 217 of the Laws of 1939. This situation might result from failure to make application before September 1st, or for some other reason. In such cases there could be no transfer of apportionment and the high school outside the county of the pupil's residence could refuse him admittance though it could accept him without benefit of transfer of apportionment and though his attendance is not authorized by the county superintendent of his home county. The pupil's eligibility to transportation would not be affected by failure to apply within time, however. The qualifications for eligibility to transportation are set out in Chapter 152, Laws of 1941, and not in Chapter 217, Laws of 1939, or in any other statutes.

It is my opinion that, when the board of trustees of any school district has determined to exercise the power conferred by Chapter 152 of the Laws of 1941 to furnish transportation and sets up a budget therefor, transportation must be furnished or payments in lieu thereof made to all pupils eligible under the provisions of said Chapter 152, Laws of 1941, including pupils who may attend high school outside the county of their residence either with or without the authorization of the county superintendent provided for in Section 1262.81 of the Revised Codes of Montana, 1935, as amended by Section 4 of Chapter 217, Laws of 1939.

Sincerely yours,

JOHN W. BONNER  
Attorney General