

## No. 272

**SCHOOLS AND SCHOOL DISTRICTS—TRANSPORTATION—PUPILS ENROLLED OUTSIDE DISTRICT OF RESIDENCE**

**Held:** School trustees have power to furnish transportation, or services in lieu thereof, for all pupils residing within their district and enrolled in the public schools of their district and also to pupils residing within their district who are enrolled in any Montana public school and otherwise eligible under Section 9 of Chapter 152 of the Laws of 1941 to receive transportation aid.

October 20, 1941.

Mr. Ernest E. Fenton  
County Attorney  
Treasure County  
Hysham, Montana

Dear Mr. Fenton:

You have asked this office for an opinion concerning the applicability of the emphasized portion of the following quotation from Section 1 of Chapter 152 of the Laws of 1941, the school transportation act:

“The board 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, and who are enrolled in the public schools of their district . . .”

The wording emphasized, without more, would lead to the conclusion transportation could be furnished only to pupils enrolled in the public schools of the district of their residence and the power of trustees limited to furnishing transportation aid to such pupils, inasmuch as school trustees have only those powers expressly conferred upon them 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.) However, consideration must be given to Section 9 of Chapter 152, which section specifies what children shall be eligible to receive transportation aid, since it is a cardinal principle of statutory construction that, if possible, effect shall be given to all parts of the statute. (*State ex rel. Koefod v. Board of County Commissioners*, 56 Mont. 355, 361, 105 Pac. 147; *In re McLure's Estate*, 68 Mont. 556, 566, 220 Pac. 527; *Montana Life Ins. Co. v. Shannon*, 106 Mont. 500, 504, 78 Pac. (2nd) 946.)

Section 9 of Chapter 152 of the Laws of 1941 specifically provides a child is entitled to transportation when he lives three or more miles from the nearest open public elementary or public secondary school **disregarding district and county boundary lines**, and contemplates such child “must reside with his parents . . . guardian” and they “must maintain a permanent home within the boundaries of the district **paying transportation.**” To give effect to Section 1 and portions of Section 9 might seem to be difficult, but they can be construed together by concluding the provisions of Section 9 for furnishing transportation to a pupil regardless of district or county boundary lines and “for each day he attends a Montana public school” are in addition to the provisions of Section 1 relating to furnishing transportation by trustees to pupils “enrolled in the public schools of their district.”

On the other hand, if it should be concluded the provisions of Section 1 and the provisions of Section 9 are conflicting and cannot be harmonized then the provisions of Section 9 would control, being the latter provision in order of arrangement. (*State ex rel. Boone v. Tullock*, 72 Mont. 482,

486, 234 Pac. 277.) We reach the same result, that is, that transportation may be furnished by the district of a pupil's residence to pupils enrolled in a public school outside the district of his residence. However, in my opinion, it is preferable to construe the provisions together and I am sure it is possible to do so. I believe an examination of the entire act leads to the conclusion it was not the intention of the legislature to authorize the furnishing of transportation only to pupils enrolled in the district furnishing transportation. Such an interpretation of the statute would in many instances defeat the very purpose of the act. Conceding, for sake of argument, there are two admissible constructions of the statute, namely: (1) that transportation is limited to pupils enrolled in the district and (2) that transportation should be furnished regardless of school district or county boundaries and to those eligible under Section 9, we would not be justified in adopting the construction that defeats the manifest object of the law (*State ex rel. Boone v. Tullock*, 72 Mont. 482, 486, 234 Pac. 277), which is to transport pupils to the nearest or most convenient public school or furnish services in lieu of transportation when such pupils are eligible under the act.

It is therefore my opinion school trustees have the power to furnish transportation, or services in lieu thereof, for all pupils residing within their district and enrolled in the public schools of their district and also to pupils residing within their district who are enrolled in any Montana public school and otherwise eligible under Section 9 of Chapter 152 of the Laws of 1941 to receive transportation aid.

Sincerely yours,

JOHN W. BONNER  
Attorney General