

No. 3

**SUPERINTENDENT OF SCHOOLS—ABANDONMENT
OF SCHOOL DISTRICTS—KIND OF TRANSPORTATION**

Held: County Superintendent of Schools may declare school districts abandoned where no school held therein for three consecutive years, and trustees have not provided transportation by omnibus, bonded competent driver. Paying of board and room or transportation does not bring within exception.

January 14, 1941.

Mr. J. W. Lynch
County Attorney
Chouteau County
Fort Benton, Montana

Dear Mr. Lynch:

I have your communication and opinion of January 9, 1941, wherein you ask my opinion as to whether the County Superintendent of Schools may abandon a school district which has not held school within said district for the last three years, and wherein the trustees thereof have paid to the parents of the school children therein transportation allowances. The parents have provided their own transportation; the school district trustees have provided no means of transportation whatever other than the allowance.

It is my opinion that your opinion to your County Superintendent of Schools states the law correctly, and the County Superintendent may proceed as provided in Section 970, Revised Codes of Montana, 1935, on the facts as you have stated them.

The Legislature in Section 970, Revised Codes of Montana, 1935, has given the County Superintendent the power to declare school districts abandoned when terms of school aggregating at least twelve months have not been actually held in a district during a period of three consecutive years.

“ . . . Provided, however, that if any such district has provided transportation for all children of school age, living within the district, to another district for the purpose of attending school therein for a term of at least six (6) months during each of such three (3) years, such transportation to be by means of a safe and proper omnibus, or omnibuses, driven or operated by a competent driver, or drivers, under contract let by the board of trustees of the district, and which driver, or drivers, shall be under proper and sufficient bonds, such transportation shall be deemed equivalent to the actual holding of school in

such district for a term of six (6) months in each year, and such district shall not be ordered abandoned. . . ." (Emphasis mine.)

You will note that the emphasized portion of the quoted part of Section 970, Revised Codes of Montana, 1935, is the only exception in the mode and manner of transportation which would preserve the district.

It is a well known rule of law that the legislature can make and unmake school districts as it sees fit. The last act of the legislature (Section 970, supra) clearly intended to permit districts which were large enough to transport their children by means of omnibus, or omnibuses, driven by competent bonded drivers. Thus, such districts are an exception to the rule requiring districts to be abandoned where school had not been actually conducted therein for the required time. This office has so held heretofore. See:

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

It is therefore my opinion, under the facts you have presented and set forth in your opinion, that in such school districts—which have not actually conducted school for a period of twelve months during a period of three consecutive years and where the school district trustees have not provided transportation by omnibus as provided by Section 970, Revised Codes of Montana, 1935—the County Superintendent of Schools may by proper order declare the abandonment of such school districts.

Very truly yours,

JOHN W. BONNER
Attorney General