

No. 310

**TRANSPORTATION—SCHOOLS—TEACHERS—
COUNTY SUPERINTENDENT—STATE SUPERINTEN-
DENT OF PUBLIC INSTRUCTION—RECORDS OF
DAILY ATTENDANCE—DAILY REPORT OF TRANS-
PORTATION—ATTENDANCE**

Held: Regularly contracted bus drivers are not required under the statutes to make daily record of the children transported. However, Boards of Trustees may require such a daily record in their contracts. The basis of claiming reimbursement for transportation from the state is the daily record of the teacher of the attendance and the daily report of the teacher of the days each child was actually transported by parents or guardian and the attendance of those where services in lieu of transportation are actually in attendance.

December 6, 1941.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have submitted the following question:

"The exact question is whether bus drivers on regularly contracted bus routes must keep a daily record of children transported and if this daily record is to be used as the basis for claiming reimbursement of transportation money from the state, or if the daily transportation record required in Section 5 of said act applies only to contracts held by parents or guardians and not to regular bus routes; and if, as to children on regular bus routes the school attendance record, and not a daily transportation record should be used as a basis for claiming state transportation money."

The answer to your question is contained in the provisions of Chapter 152, Laws of 1941. On examination of said Chapter, I find no requirement in the law requiring a regularly contracted bus driver to keep a daily record of children transported. However, the trustees of a district may, if they so desire, require such record to be made and incorporate such provision in their contract with the bus driver. Such record, if required, cannot be used as a basis for claiming reimbursement from the state for transportation.

Section 5 of Chapter 152, Laws of 1941, in part provides as follows:

"Trustees shall not pay any contract installment, for transportation or services in lieu thereof, before such service has been rendered nor before the district clerk receives a report from the teacher of the school where the children, receiving transportation are attending. Such report must contain a record of attendance for the monthly or six-weeks transportation period being paid for; and must state the actual number of days children were actually transported, provided, that such reports shall not apply to regularly contracted bus transportation. It shall be the duty of all public school teachers to make such reports as are hereby required." (Emphasis mine.)

It is to be noted the report required to be made by the teacher covers only the daily attendance of the children contracted to be transported by their parents or guardian or those furnished services in lieu of transportation.

Reimbursement for transportation to be made by the state shall be made in accordance with the provisions of Sections 1200.1, 1200.6, 1200.7 and 1200.9 of the Revised Codes of Montana, 1935, except that the schedule provided in Section 7, Chapter 152, Laws of 1941, or services in lieu thereof, for individual transportation or services in lieu thereof, shall be used; and further limited to the pro-rated share in any one year of the state's participation in the total amount of \$300,000.00.

By reading Section 1200.6, Revised Codes of Montana, 1935, in conjunction with Section 13 of Chapter 152, Laws of 1941, I find the intent of the legislature was that Section 1200.6, Revised Codes of Montana, 1935, was amended by implication to read as follows:

Section 1200.6. County superintendent's annual report—contents. Not later than July 15th of every year, the county superintendent of schools of every county shall certify to the state superintendent of public instruction the number of elementary school, classroom units, and separately, of secondary school, classroom units, computed in accordance with Sections 1200.1 and 1200.2, in the elementary and secondary schools of his county, and, together therewith, the aggregate days of attendance during the last, completed school year for all the elementary school pupils, and, separately, for all the secondary school pupils of the county. At the same time, the county superintendent shall likewise certify to the state superintendent of public instruction the number of pupils, actually attending a public school in his county residing three or more miles distant therefrom, and the actual cost of the transportation of such pupils pursuant to the schedule of rates fixed by Section 7, Chapter 152, Laws of 1941. (Emphasis mine.)

The county superintendent receives from each teacher the daily attendance reports and the daily transportation reports and on such reports the county superintendent bases his certification to the state superintendent of instruction and the state superintendent of instruction then uses such facts as the basis for his computation and certification to the state treasurer for payment.

It is therefore my opinion a bus driver operating a regularly contracted bus, transporting children for a school district, is not required by the statute to keep a daily record of the children so transported. However, a board of trustees of a school district may require such a daily record in its contract.

It is further my opinion the records to be used as the basis of claiming reimbursement for transportation from the state are to be based on:

1. The daily record of the teacher of pupil attendance;
2. The daily report of the teacher of the days each child was actually transported by parents or guardian;
3. The daily report of the teacher of the days each child was actually in attendance in the cases where services in lieu of transportation are furnished, as provided in Section 5, Chapter 152, Laws of 1941, and as provided by Sections 1200.1, 1200.6, 1200.7 and 1200.9, Revised Codes of Montana, 1935.

The legislature further fixed the yardstick by which the cost of transportation shall be computed by the schedule set forth in Section 7 of Chapter 152, Laws of 1941.

Sincerely yours,

JOHN W. BONNER
Attorney General