

No. 344

**ABANDONMENT—SCHOOL DISTRICTS—CONTRACTS
WITH OTHER DISTRICTS TO TRANSPORT PUPILS**

Held: Where a school district has no school house, has had no school for seven or eight years, and contracts with another district to transport its pupils in the other district's bus, such district is subject to be abandoned under Section 970, Revised Codes of Montana, 1935.

January 21, 1942.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have submitted the following question:

"Where 'B' school district has not actually held any school within its boundaries for seven or eight years, there being no school house in the district, and where 'B' district has contracted with 'C' school district whereby 'C' school district furnishes its safe and proper bus, driven and operated by a competent driver under contract let by 'C' district with the bus driver for the transportation of the pupils in 'B' district to 'C' district, does such transportation comply with the terms of Section 970, Revised Codes of Montana, 1935, so that 'B' school district may not be abandoned? In other words, is such transportation equivalent to holding school in 'B' district?"

The answer to your question is contained in Section 970, Revised Codes of Montana, 1935. The pertinent part thereof is as follows:

"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.)

The language of the foregoing part of Section 970, Revised Codes of Montana, 1935, is plain. The meaning and intent of the legislature is apparent. In order for a school district to provide transportation equivalent to the actual holding of school in such district, the district itself (in this case "B" district) must provide a safe and proper bus or busses, driven or operated by a competent driver, or drivers, under contract let by the board of trustees of the district having the pupils to transport. If the legislature had intended any other arrangement to be equivalent to the actual holding of school, it could easily have so provided.

"A statute that directs a thing to be done in a particular manner ordinarily implies that it shall not be done otherwise."

Raleigh, etc. Co. v. Reid, 20 U. S. 520.

"Where language of statute is plain, simple, direct, and unambiguous, it does not require construction."

Great Northern Utilities Co. v. Public Service Comm., 88 Mont. 180, 293 Pac. 294.

"In construing statute, legislative intention controls, and such intention is determined from language employed."

McNair v. School District, 87 Mont. 423, 288 Pac. 188.

Section 970, Revised Codes of Montana, 1935, is the only statute specifically dealing with the subject "abandonment of school districts" and it treats the subject minutely and specifically. We cannot read something into this statute that is not there.

"Under the doctrine of *expressio unius est exclusio alterius*, a statute prescribing a right and a particular remedy must be strictly construed and followed."

Page v. New York Realty Co., 59 Mont. 305, 196 Pac. 871.

"Special statute controls general statute relating to same subject matter and must be read as exceptions to statute covering same and other subjects in general terms."

In re Wilson's Estate, 102 Mont. 178, 56 Pac. (2nd) 733, 105 A. L. R. 367.

"General and comprehensive statute must yield, to extent of inconsistency, to statute dealing minutely and specifically with part of same subject."

In re Stevenson's Estate, 87 Mont. 486, 289 Pac. 566.

To the same effect, see Attorney General's Official Opinions, Volume 14, page 141; Volume 19, Opinion No. 3; Volume 19, Opinion No. 182.

It is my opinion that, under the facts you have given, your "B" district has not brought itself within the exception provided in Section 970, Revised Codes of Montana, 1935, in that it has not provided transportation, as therein required, to be deemed equivalent to actually holding school, and that the said district is subject to abandonment by the county superintendent according to the mandate of Section 970, Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General