

Opinion No. 132.**Schools—County Superintendent of Schools—Transportation of School Pupils.**

Held: When a pupil lives more than three (3) miles from the nearest high school in the county of his residence, and more than one and one-half (1½) miles from an established bus route operated by such high school, and closer to a high school of an adjoining county than to any high school located in the county of his residence, and when proper application has been made to the county superintendent of schools, not later than October 15th, by the parent or guardian of the pupil for whom such transfer is desired, the county superintendent must authorize such pupil's attendance. The county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence. In all other cases the county superintendent of schools may at his discretion authorize any eligible pupil to attend a high school in a county outside of his residence.

September 24, 1943.

Mr. George D. Ore
County Attorney
Petroleum County
Winnett, Montana

Dear Mr. Ore:

You have submitted the following questions:

"(1) Does a school bus line which operates only on weekends, taking pupils to a designated point on the highway Friday evenings and picking them up again at the same place Sunday afternoons, constitute 'an established bus route' according to the meaning of this term in Chapter 219, Section 1262.81, Laws of 1943?"

"(2) Is it mandatory that the county superintendent of schools of the county of a pupil's residence authorize his attendance at an accredited high school in an adjacent county when the following conditions exist?

(a) The pupil's home is twenty-five miles closer to the nearest high school in the adjacent county and is more than fifty miles to the nearest high school in the county of his residence.

(b) The pupil's home is more than one and one-half miles from an established bus route.

(c) The pupil's parents have made proper application to the county superintendent of the county of his residence before October 15th of the year in which he desires to enter the high school in the adjacent county."

In answer to your first question, the word "established" means: "To make stable or firm; to fix immovably, or firmly; to settle; to conform." (State v. Powers, 39 Mont. 259, 268, 102 Pac. 583; see also Webster's International Dictionary.) Webster's International Dictionary defines the word "route" to mean: "The course or way which is or is to be traveled or passed."

Thus, for the purpose of this inquiry, at least, an "established bus route" would be taken to mean: "The course or way which is or is to be traveled or passed over by a school bus carrying pupils to and from school." The fact that the school bus is run but twice a week is not controlling, provided the course established is definite and certain.

Your question two is based upon controversial questions with which this office is not concerned. School controversies are to be settled by school authorities—not the Attorney General. (See Section 966, Revised Codes of Montana, 1935.) Questions of law may be presented by the county attorney to the Attorney General for his official opinion when the former office believes that necessity requires the same.

As a matter of law the provisions of Section 1 of Chapter 219, Laws of 1943, decides the law question involved here and is plain, certain and unambiguous and therefore needs no construction. Such section so far as pertinent here, provides:

"The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, must be authorized by the county superintendent of schools of the county of his residence when a

pupil lives more than three (3) miles from the nearest high school in the county of his residence, and more than one and one-half (1½) miles from an established bus route operated by such high school, and closer to a high school of an adjoining county than to any high school located in the county of his residence, and when proper application has been made to the county superintendent of schools, not later than October 15th, by the parent or guardian of the pupil for whom such transfer is desired. Provided further, that the county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence.

"In all other cases the county superintendent of schools may at his discretion authorize any eligible pupil to attend a high school in a county outside of his residence. . ."

Therefore it is my opinion:

The words "established bus route" insofar as pertinent here means: "The course or way which is or is to be traveled or passed over by a school bus carrying pupils to and from school." The fact that the school bus is run but twice a week is not controlling, provided the course established is definite and certain.

Controversial school matters, based upon questions of facts, are for school authorities to decide—not for the Attorney General. The latter officer is concerned with questions of law only.

When a pupil lives more than three (3) miles from the nearest high school in the county of his residence, and more than one and one-half (1½) miles from an established bus route, operated by such high school, and closer to a high school of an adjoining county than to any high school located in the county of his residence, and when proper application has been made to the county superintendent of schools, not later than October 15th, by the parent or guardian of the pupil for whom such transfer is desired, the county superintendent must authorize such pupil's attendance. The county superintendent of schools may at his discretion require a pupil obtaining such transfer to attend the high school nearest his residence. In all other cases the county superintendent of schools may

at his discretion authorize any eligible pupil to attend a high school in a county outside of his residence.

Sincerely yours,
R. V. BOTTOMLY
Attorney General