

Opinion No. 145.

Schools and School Districts—Transportation — Indian Children — Federal Obligation—Alteration of Transportation Schedule.

Held: No discrimination shall be made in payment of the state school transportation funds for Indian children:

The state should seek federal

reimbursement for expenditures of transportation funds for Indian children;

Where a school is maintained in a district but one or more pupils reside at such a distance from the school that it would be more economical and desirable, instead of furnishing transportation or board for attendance at the school in such district, to furnish transportation or board in a private home or dormitory while attending school in another district, the schedule provided for in Section 7 of Chapter 152, Laws of 1941, may be altered by the county superintendent of schools, with the consent and approval of the State Superintendent of Public Instruction; provided that in no case shall the altered schedule allow more than twenty dollars (\$20.00) per month for one child and five dollars (\$5.00) per month for each additional child from the same family.

October 14, 1943.

Mr. Bert Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following:

"A parent of a Crow Indian child, both the parent and the child being enrolled members of the Crow Indian Tribe, resides on their Indian allotment upon the Crow Indian Reservation in an isolated area. Until the beginning of the school year of 1943-1944, a school district of the county maintained a school where five or six children, including this Indian child, attend the school. The school district closed this school and, of course, there are no facilities at present for this Indian child and he is compelled to travel a distance of approximately 25 miles to another elementary school in the same district. The parent of the Indian child has applied to the school board of the school district for transportation for this child. Can the school board be required to pay transportation to this Indian child?"

"A parent resides with his child within the boundaries of a school district in Big Horn County. The child is of high school age, and appropriate measures have been made for the purpose of sending this child to high school in another county by the transferring of funds which have been approved by the county superintendent of our county. There has never been any high school maintained in this school district and the nearest high school in Big Horn County to the place of residence of this high school student is maintained by another district and located approximately 65 miles from the child's residence. The parent has demanded the sum of \$20.00 per month for transportation, maintaining he is entitled to that amount if the county superintendent will alter the schedule and have it approved by the state superintendent as provided by Subsection 8, of Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943. Can the county superintendent of schools alter the transportation schedule in such case and pay this child the maximum of \$20.00 per month?"

In answer to your first question regarding the furnishing of transportation to the Indian child, this subject has been thoroughly covered in Report and Official Opinions of Attorney General. Volume 17, page 262, wherein it was held:

"No discrimination shall be made in payment of the state school transportation funds for Indian children;

"The State should seek federal reimbursement for expenditures of transportation funds for Indian children."

We concur in this opinion.

In answer to your second question as to the furnishing of transportation for children in isolated districts so that they may attend schools in another county, we submit the following:

Subsection 8 of Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, provides:

"In isolated cases where it will be more economical and desirable to close a school and to provide transportation, or board in a private home

or dormitory for one or more pupils in order that they may attend another school in the same district, or in order that they may attend a school in another district, or where a school is maintained in a district but one or more pupils reside at such a distance from the school that it would be more economical and desirable, instead of furnishing transportation or board for attendance at the school in such district, to furnish transportation or board in a private home or dormitory while attending school in another district, this schedule may be altered by the county superintendent of schools, with the consent and approval of the state superintendent of public instruction; provided that in no case shall the altered schedule allow more than twenty dollars (\$20.00) per month for one child and five dollars (\$5.00) per month for each additional child from the same family." (Emphasis mine.)

As you suggested in your opinion rendered upon this subject that under the old law (Subsection 8, Section 7, Laws of 1941) it provided that in isolated cases where it will be more economical and desirable to close a school and board a pupil or pupils in a private home or in a dormitory, the schedule may be altered by the county superintendent of schools with the consent of the State Superintendent of Public Instruction. Consequently under the old law it was necessary to close a school before the schedule provided in Section 7 could be changed. Under the new law, which is the amendment of Subsection 8 of Section 7, the schedule provided for in Section 7 may be altered by the county superintendent of schools, with the consent and approval of the state superintendent of public instruction if:

(a) In isolated cases it will be more economical and desirable to close a school and to provide transportation, or board in a private home or dormitory for one or more pupils in order that they may attend another school in the same district, or in order that they may attend a school in another district, or

(b) Where a school is maintained in a district but one or more pupils reside at such a distance from the

school that it would be more economical and desirable, instead of furnishing transportation or board for attendance at the school in such district, to furnish transportation or board in a private home or dormitory while attending school in another district.

In any such cases the county superintendent of schools, with the consent and approval of the State Superintendent of Public Instruction, may alter the schedule set out in Section 7, but in no case to allow more than \$20.00 per month for one child and \$5.00 per month for each additional child for the same family.

You will note that prior to the amendment of said Subsection 8, aforesaid, this office rendered an opinion numbered 507, recorded in Volume 19, Report and Official Opinions of the Attorney General, which dealt with a question similar to that which is now before us, wherein it was held that said Subsection 8 pertained to the alteration of schedules only when it was economical and desirable to close a school. If there were no closing of a school the provisions of said subsection would not be applicable.

Subsequently said Subsection 8 was amended in order to meet other conditions—such as referred to in (b) hereof.

Attention should also be called to Section 9 of Chapter 152, Laws of 1941, which defines the eligibility of school children for transportation and disregards district and county boundary lines.

Therefore it is my opinion that the county superintendent of schools with the consent and approval of the State Superintendent of Public Instruction, under the facts stated, may alter the schedule as provided in Subsection 8 of Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943.

However, inasmuch as the question presented here involves the sending of the pupil to a school outside of the county, the provisions of Chapter 219, Laws of 1943, should be taken into consideration and I am taking it for granted that the school officers have, or will, comply with the provisions thereof.

Sincerely yours,
R. V. BOTTOMLY
Attorney General