

Opinion No. 240.

Schools and School Districts—Transportation—Pupils Enrolled Outside District of Residence—Residence, School Pupils.

Held: A parent who resides in two school districts for a portion of each year and earns his living in one district is a resident of the district where he earns his living in regard to the application of Chapter 203, Laws of 1943. It is mandatory, under the provisions of Chapter 203, Laws of 1943, that the school district in which a child resides and who attends school in another district with requisite authorization, pay the actual cost of education. The trustees of a school district have discretionary power to furnish transportation but if they furnish transportation to any, they must furnish to all. It is not mandatory for a school district to pay the actual cost of educating a child who attends school in another district unless such child has been authorized to do so by the county superintendent of the county of the child's residence and the board of trustees of the district which he intends to attend school. School trustees do not have the authority to furnish transportation to a child who lives less than three miles from an elementary school, except in the above authorized cases.

August 14, 1944.

Mr. W. M. Black
County Attorney
Toole County
Shelby, Montana

Dear Mr. Black:

You have submitted the following facts for my opinion:

"Mr. 'A.' resides in School District No. 19 and has children of grade school age. He owns his farm and has a home in said District No. 19, but the grade school in District No. 19 is more than three miles from his residence in the district. This same Mr. 'A.' also owns a home in Shelby in District No. 14 wherein he and his wife and family reside during the school year of nine months and he also pays taxes in School District No. 14; also he and his wife are registered voters in School District No. 14, and he claims that Shelby in District No. 14 is his legal residence and place of abode, although he actually earns the living for himself and family on the farm in School District No. 19."

You ask the following questions in regard to the above facts:

"1. Is Mr. 'A.' a resident of School District No. 14 or School District No. 19, with reference to the school laws?"

"2. If we assume that Mr. 'A.' is a resident of School District No. 19, and his children attend school in District No. 14, must School District No. 19 pay the tuition set by School District No. 14?"

"3. If children who are residents of School District No. 19 are permitted to attend by the county superintendent and do attend in School District No. 14 must the trustees of School District No. 19 approve the transfer of funds for transportation?"

"4. You also ask if the parents of grade school children who reside within three miles of the school in their district and who attend school in School District No. 14 are entitled to receive tuition and transportation costs from the district of the residence of the parents?"

In answering your first question it is necessary to consider Section 1013,

Revised Codes of Montana, 1935, as amended by Chapter 203, Laws of 1943, which provides in part:

"For the purpose of determining the residence of such child the place where the father resides and earns the major portion of the living for his family shall be used."

The facts submitted concerning Mr. "A." offer a perplexing problem in that he owns homes in both school districts and resides in both during some portion of the year. The place he claims as his residence and his place of voting would be material in determining his domicile if the definition contained in Section 1013, as amended, were not the basis of determination. The fact he resides in both District 19 and 14 for some part of the year does not assist in the fixing of residence, but the fact he earns his living in District No. 19, must, under the definition, be the controlling factor. Both of the elements, residence and the earning of the living, are present for fixing the residence in School District No. 19.

It is also to be noted that residence for school purposes does not change the domicile as in 17 Am. Jur. 608, the text states:

"Thus, it may be found that there was no change of domicile when the only purpose in making the change was to place the children of the family in good schools."

In answering your second question I assume that the children have received the written permission to attend school in School District No. 14 and that the provisions of Chapter 203, Laws of 1943, have been complied with in that regard.

It is mandatory that the school district of the residence pay the "actual cost of educating" the children. Chapter 203, Laws of 1943, contains the following provision:

"When approval of attendance in another district within or without the county has been granted, the district on which such child resides shall pay to the school district where such child attends, the actual cost of educating a child in the school attended. Such actual cost to be determined by finding the average cost

per child for the preceding year for maintaining the public elementary school to be attended."

It is also provided that the budget supervisors include the item in the preparation of the budget.

The tuition to be charged is not to be an arbitrary figure set by the trustees of the school of attendance, but is one based on mathematical computation from the records of the previous year.

The meaning of "actual cost" has been defined by this office in Opinion No. 108, Volume 20, Report and Official Opinions of the Attorney General.

The answer to your third question is found in Chapter 152, Laws of 1941, which provides:

"The board of trustees of any school district or county high school within the state of Montana shall have the power to furnish transportation to and from school . . ." (Emphasis mine.)

The wording emphasized means that the trustees have a discretionary authority to furnish transportation or funds for transportation and that it is not mandatory that they provide transportation funds.

Section 9, Chapter 152, Laws of 1941, answers your fourth question in part as it provides:

"Any child, not younger than six (6) nor older than twenty-one (21) years, whose residence is in the state of Montana, three (3) or more miles distant, over the shortest practical road, from the nearest public elementary school . . . is entitled to transportation for each day he attends a Montana public school . . ."

It must be found from the above provision that any child who lives within three miles of a public elementary school is not eligible to receive transportation assistance, unless in authorized cases.

By the terms of Chapter 203, Laws of 1943, the parents of a child who lives less than three miles from the school of their own district are not entitled to have the actual cost of educating the child paid to the school of another district where the child attends school. However, Section 3 and Section 5 of Chapter 203 provide exceptions to the

three mile limitation and if the child receives written permission to attend the schools in another district as provided in these exceptions, then the tuition must be paid by the district of his residence.

It is therefore my opinion:

1. A parent who resides in two school districts for a portion of each year and earns his living in one district is a resident of the district where he earns his living in regard to the application of Chapter 203, Laws of 1943.

2. It is mandatory, under the provisions of Chapter 203, Laws of 1943, that the school district in which a child resides and who attends school in another district with the requisite authorization, pay the actual cost of education.

3. The trustees of a school district have discretionary power to furnish transportation, but if they furnish transportation to any, they must furnish it to all. It is not mandatory for a school district to pay the actual cost of educating a child who attends school in another district unless such child has been authorized to do so by the county superintendent of the county of the child's residence and the board of trustees of the district in which he intends to attend.

4. School trustees do not have the authority to furnish transportation to a child who lives less than three miles from an elementary school, except in the above authorized cases.

Sincerely yours,
R. V. BOTTOMLY
Attorney General