

Opinion No. 120.

Schools and School Districts—Transportation, School Children—Board of Trustees of School Districts.

Held: The State of Montana must pay to a school district one-third the cost of transportation by school buses in accordance with the schedule fixed by the Board of Education as provided in Section 1200.1, Revised Codes of Montana, 1935, and also the state must pay to the district one-third of the amount paid to parents or guardians in lieu of bus transportation as provided in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945, and the fact the per capita transportation cost is higher in one class than the other will not change the method of computing the amount of the state's reimbursement to the school district.

February 6, 1946.

Miss Elizabeth Ireland
Superintendent of Public Instruction
State Capitol
Helena, Montana

Dear Miss Ireland:

You have submitted for my consideration the following question:

If a board of trustees of a school district puts on a bus and employs a bus driver to carry on transportation

for the children in a school district, and if this bus transportation costs more than individual transportation (see Chapter 152, Section 7 of the 1941 School Laws), will the state be required to pay one-third of the cost of the bus transportation; or is the state required to pay one-third of the cost of the transportation according to the schedule as given in the chapter and section quoted above?

In answering your question it is necessary to consider Section 13 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, which reads in part as follows:

"Each school district and each county high school meeting the requirements of this act shall be entitled to reimbursement from the state public school general fund in an amount not to exceed one-third (1/3) of the actual cost of transportation, or services rendered in lieu of transportation, annually on presentation to the state superintendent of public instruction, through the office of the county superintendent of schools, or certified claims for such reimbursement using for such purpose the forms provided by the state superintendent of public instruction. Such reimbursement 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 this act for individual transportation, or services in lieu thereof, shall be used instead of any schedule which may have been heretofore or may hereafter be fixed and promulgated by the state board of education."

The above section differentiates between transportation by bus and individual transportation in that it provides "such reimbursement 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 this act for individual transportation, or services in lieu thereof, shall be used . . ." The schedule for individual transportation, or services in lieu thereof, is found in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws

of 1943, and Chapter 116, Laws of 1945, which reads in part as follows:

"The board of trustees may pay to the parents or legally appointed guardian of each child eligible to transportation under this act board or rent, or provide transportation for the child, the amount called for under the following schedule in lieu of furnishing bus transportation . . ."

It would appear, therefore, that the amount of reimbursement received by each district would be determined by two tests. In one class, bus transportation, the schedule fixed by the Board of Education by virtue of Section 1200.1 would be applied, and in the other class, individual transportation, the amount paid under the schedule set out in Section 7 of Chapter 152, Laws of 1941, as amended, would be applied. The fact that the cost per pupil for transportation is higher in one instance than the other does not affect the method of computation or the amount paid to the school district by the state. The transportation furnished determines the method of computing the one-third reimbursement by the state. The payments made under Section 7 of Chapter 152, Laws of 1941, as amended, are in lieu of bus transportation and Section 13 of Chapter 152, Laws of 1941, as amended, states that payments made under the schedule found in Section 7 of Chapter 152, shall be used as a basis for computing the reimbursement for such individual transportation, or services in lieu thereof. All other transportation furnished by the district comes within the provisions of Section 1200.1, 1200.6, 1200.7 and 1200.9 of the Revised Codes of Montana, 1935.

It is therefore my opinion that the State of Montana must pay to a school district one-third the cost of transportation by school buses in accordance with the schedule fixed by the Board of Education as provided in Section 1200.1, Revised Codes of Montana, 1935, and also the state must pay to the district one-third of the amount paid to parents or guardians in lieu of bus transportation as provided in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945, and the fact the per capita transportation cost is higher in one class than the

other will not change the method of computing the amount of the state's reimbursement to the school district.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General