

June 27, 1946.

Mr. Chester E. Onstad
County Attorney
Powder River County
Broadus, Bontana

Dear Mr. Onstad:

You have requested my opinion asking if funds must be transferred by a school district for students who attend high school in a county adjoining that of their residence when they reside closer to a high school in the county of their residence than a high school in an adjoining county.

Your question is answered by the provisions of Section 1262.81, Revised Codes of Montana, 1935, as amended by Chapter 217, Laws of 1939, and Chapter 219, Laws of 1943, which section provides that the transfer of students:

“ . . . 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.” (Emphasis mine.)

The emphasized portion of the above quoted section indicates that it is **not mandatory** for the County Superintendent of Schools to authorize the transfer unless there is a high school in the adjoining county closer to the student's residence than in the county of residence. Section 9 of Chapter 152, Laws of 1941, as amended by Chapter 116, Laws of 1945, states the rules for eligibility for transportation and contains similar distance requirements for transportation to those above quoted, but does not have the prohibition that if a high school in the county of residence is closer than the one in the adjoining county, it is not mandatory to furnish transportation.

It is therefore my opinion that high school students who attend high school

Opinion No. 175.

Schools and School Districts—High Schools, Transfer of Pupils—Pupils, Transfer—County, Schools.

Held: High school students who attend high school outside of the county of their residence and who reside closer to a high school in the county of their residence than the one attended are not entitled as a matter of right to permission for transfer and resulting payment of such funds although the same students may be entitled to transportation.

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Sincerely yours,
R. V. BOTTOMLY,
Attorney General