

Opinion No. 178.

Schools and School Districts—Transportation, School—Budget, School Transportation.

Held: The schedule found in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945, applies only to the computation of the amount paid to parents or guardians of students who receive such payments instead of bus transportation and the portion of budgets for bus transportation paid by the county and the school districts is fixed by the actual amounts called for in the budgets.

July 5, 1946.

Dear Mr. McKenna:
County Attorney
Fergus County
Lewistown, Montana

Dear Mr. McKenna:

You have requested my opinion asking if the transportation budgets shall be computed according to the schedule fixed by Section 7, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945. You advise me that the county commissioners have made levies in accordance with the above schedule and that the amounts so provided have not been sufficient to meet the requirements of the transportation budgets as submitted by the various boards of school trustees within your county.

Under Section 14, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, it is made the duty of school trustees to provide complete transportation budgets for both elementary and high schools.

Each school district and each county high school is reimbursed "in an amount not to exceed one-third (1/3) of the actual cost of transportation" from the state public school general fund, under the provisions of Section 13 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943. This provision of the law was construed in an opinion of this office, i. e., Opinion No. 120, Volume 21, Report and Official Opinions of the Attorney General, wherein it was held:

"The State of Montana must pay to the 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.

From the above quoted it is apparent the contribution by the state for bus transportation is limited and fixed by the schedule promulgated by the state board of education. The amount thus paid by the state as reimbursement for bus transportation might well differ from one-third the actual cost because of the use of the schedule referred to.

School districts which furnish transportation for elementary schools are entitled, under Subsection (b) of Section 13, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, to reimbursement of one-third of the actual cost of transportation from the common school fund provided by the tax levy made in accordance with the provisions of Section 1202, Revised Codes of Montana, 1935. The levy provided by Section 1202 is a county-wide levy of not more than eight mills and in the event such levy is not sufficient to meet the requirements of the various district budgets, the county commissioners are not authorized to make an additional levy. Opinion No. 243, Volume 20, Report and Official Opinions of the Attorney General.

The foregoing sets out the provisions for two-thirds of the elementary school transportation budgets, and the remaining one-third, and any deficiencies from the State of Montana and the common school fund, are met by the school district under the provisions of Subsection 1, Section 14 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, which allocates the funds realized from a maximum levy of ten mills authorized by Chapter 51,

Laws of 1945, to such purposes. If the amount available from such ten mill levy is not sufficient, then, under Subsection 2, Section 14 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, an additional levy against the property of the district may be authorized by the qualified electors of the district.

Both district and county high schools receive reimbursements from the state for one-third of their transportation budgets as computed according to the previously indicated manner. The balance of high school transportation budget is provided by a county-wide tax levy which is not limited in amount as Subsection (b) of Section 14, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, reads :

“ . . . the county commissioners, except as hereinafter provided, shall make a county-wide levy of such number mills as will raise such total.”

The schedule found in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, has no application to the cost of operating school buses as Section 7 provides in part:

“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 under for the child, the amount called for under the following schedule in lieu of furnishing bus transportation.”
(Emphasis mine.)

From the emphasized portion of the above quoted, it is apparent that the schedule found in Section 7 fixes the amounts paid to parents or guardians of students who do not receive transportation on the school buses, but receive such cash payments as a substitute for actual transportation.

It is therefore my opinion that the schedule found in Section 7 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945, applies only to the computation of the amount paid to parents or guardians of students who receive such payments instead of bus transportation paid by the county and the school districts and the portion of budgets for bus transportation paid by the county and the school dis-

tricts is fixed by the actual amounts called for in the budgets.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General