

Opinion No. 186.

Schools and School Districts—Transportation, Schools—Tuition, Schools—Warrants, School.

Held: 1. Children whose parents have moved into a district and whose parents maintain a permanent

residence within the district are entitled to the same school transportation privileges as are the other children of the district without regard to the length of residence of the parents within the district.

2. Children whose parents have moved into a school district which does not maintain an elementary school are entitled to attend the school in another district to which the children of the district are transported and the district of the parents' residence must pay the proportionate amount for such pupil to the school attended as provided in Section 4 of Chapter 152, Laws of 1941.

3. The number of school trustees who must countersign school district warrants with the school district clerk is not fixed by statute, but the trustees may, by appropriate resolution, provide for such counter signatures.

August 3, 1946.

Mr. Bert I. Packer
County Attorney
Teton County
Choteau, Montana

Dear Mr. Parker:

You have requested my opinion concerning the following questions:

1. What is the obligation of a school district to pay transportation and tuition for children who have moved into the district from another county? You advise me the school district in question does not maintain an elementary school but provides transportation to an elementary school in another district.

2. What obligation does a school district have to pay transportation for elementary pupils who have moved from one district in the county to another district?

3. What number of trustees should sign warrants in school districts of the second and third classes?

Your first two questions concerning transportation are answered by Opinion No. 272, Volume 19, Report and Official Opinions of the Attorney General, wherein it was held:

"School trustees have the power to furnish transportation, or services in lieu thereof, for all pupils residing within their district and enrolled in the public schools of their district and also to pupils residing within their district who are enrolled in any Montana public school and otherwise eligible under Section 9 of Chapter 152 of the Laws of 1941 to receive transportation aid."

As you will note, Section 9 of Chapter 152, Laws of 1941, does not require the residence in the district be for any fixed length of time as the section provides "such child must reside with his parents or legally appointed guardian, and his parents or guardian must maintain a permanent home within the boundaries of the district paying transportation." It is the district in which the permanent home is located which must pay the transportation, and not the district from which the family moved, even though the move was made a short time before the request is made for transportation.

The payment of tuition for children who have moved into a school district which does not maintain an elementary school is covered by Section 4 of Chapter 152, Laws of 1941. Section 4 of Chapter 152 provides the trustees of a school district have the power to close an elementary school and transport the pupils to a school in another district, which appears to be the case from the facts you have given me. Section 4 also provides it shall be the duty of the school district which closes its schools to assist in the support of the schools of the district where the pupils attend in the direct proportion the number of pupils of the closed school bears to the number of pupils in the school attended.

Chapter 203, Laws of 1943, which amends Section 1013, Revised Codes of Montana, 1935, provides for the transfer of school funds for children who attend elementary school in a district other than that of their residence. Section 1013, as amended, does not specifically recite the section has application only to individual applications for transfer and not the transfer of all the children of a school of one district in a school in another district, but such a construction would be reasonable and would also be in accord with the rule adopted in *State v. Cer-*

tain Intoxicating Liquors, 71 Mont. 79, 227 Pac. 472, which states:

"In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. And the law imposes a duty upon the judicial department to pursue the legislative intent so far as possible. It is our duty to reconcile the statutes, if possible, and make them operative."

Applying the above rule to Section 4 of Chapter 152, Laws of 1941, and Chapter 203, Laws of 1943, results in the conclusion Section 4 of Chapter 152 must be applied when an elementary school is closed and all of the students who normally attend the school are transferred to a school in another district. There is no requirement of authorization for such attendance, and, therefore, any pupil whose parents reside in the district is entitled to attend school in the district maintaining a school with the resulting obligation on the part of the district of the child's residence to pay the proportionate tuition requirement to the district where the child attends school.

There is no specific statutory requirement fixing the number of school trustees who must sign school warrants. Section 1019.22, Revised Codes of Montana, 1935, provides in part: "The clerk of each school district must issue all warrants drawn against any fund of the district in triplicate . . ." Section 1019.23 contains the provisions "that no warrant must be issued by such clerk against such appropriation item which will exceed the unexpended balance of the appropriation therefor." These sections by inference would indicate the clerk may issue school warrants. However, Section 1015, Revised Codes of Montana, 1935, as amended, provides in part:

"Every school board unless otherwise specially provided by law shall have the power and it shall be its duty:

"1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own gov-

ernment of schools under their supervision."

It would be both good business practice and to the best interest of the school district for the trustees to prescribe by resolution the number of trustees who must countersign school warrants before such warrants will be valid obligations of the district.

It is therefore my opinion:

1. Children whose parents have moved into a district and whose parents maintain a permanent residence within the district are entitled to the same school transportation privileges as are the other children of the district without regard to the length of residence of the parents within the district.

2. Children whose parents have moved into a school district which does not maintain an elementary school are entitled to attend the school in another district to which the children of the district are transported and the district of the parents' residence must pay the proportionate amount for such pupil to the school attended as provided in Section 4 of Chapter 152, Laws of 1941.

3. The number of school trustees who must countersign school district warrants with the school district clerk is not fixed by statute, but the trustees may by appropriate resolution provide for such counter signatures.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General