

Opinion No. 64.

Schools and School Districts—Transportation—School Dormitory—Dormitory—Board of Trustees.

- Held: 1. A board of school trustees does not have the authority to require students to board and room in a district dormitory in lieu of furnishing transportation. Parents or guardians receiving transportation money for students have discretion to select the place where said student may board and room, which may or may not be the district dormitory.
2. A board of trustees has not the authority to withhold a portion of the amount fixed by Section 7, Chapter 152, Laws of 1941, as amended, for the district dormitory, but must pay the full amount to the parents or guardians.
3. A school board has no authority to withhold the amount payable in lieu of transportation, if the students elect not to live at the district dormitory.

September 6, 1945.

Mr. George D. Ore
County Attorney
Petroleum County
Winnett, Montana

Dear Mr. Ore:

You have submitted for my opinion the following questions:

1. Can a board of school trustees provide a dormitory for all students in lieu of transportation payments?
2. Has a board of trustees the authority to pay the one-third which the state contributes for transportation to students who board themselves, or board with relatives, and withhold the two-thirds which is the county portion for the dormitory fund?
3. If a student elects not to go to the dormitory, will he be deprived of transportation allowance?

In answering your questions, the authority and powers of a board of trustees must be kept in mind. In *McNair v. School District No. 1*, 87 Mont. 423,

288 Pac. 188, 69 A. L. R. 866, our court said:

"The board of trustees, therefore, constitutes the board of directors and managing officers of the corporation, and may exercise only those powers expressly conferred upon them by statute and such as are necessarily implied in the exercise of those expressly conferred."

In answering your first question, it is necessary to consider Sections 1015, 1015.2 and 1262.83, Revised Codes of Montana, 1935, as amended, which grant school districts the power to purchase or lease buildings for dormitory purposes. However, there is no express or implied power given which would permit the board of trustees to require students to live in the dormitory instead of receiving transportation aid.

Chapter 152, Laws of 1941, provides for all transportation services or services in lieu of transportation for students. The furnishing of transportation or services in lieu thereof is in the first instance in the discretion of the board of trustees and is not mandatory. (See Opinion No. 111, Volume 19, Report and Official Opinions of the Attorney General.) A board of trustees which decides to furnish transportation must furnish it to all children who live three miles or more from a public school. There can be no discrimination between eligible children in the giving of the services. (See Opinion No. 213, Volume 19, Report and Official Opinions of the Attorney General.)

Section 1 of Chapter 152, Laws of 1941, provides in part:

"School boards may in lieu of transportation furnish supervised correspondence study, supervised home study; room, rent, or board; but any sum expended in lieu of transportation shall not exceed the per pupil cost set up by schedule in Section 7 of this act."

Section 7 of Chapter 152, Laws of 1941, as amended, 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 for

the child, the amount called for under the following schedule in lieu of furnishing bus transportation . . ."

It is to be noted that the amount paid in lieu of furnishing bus transportation is paid to the parents or legally appointed guardian. This would preclude payment of the money to the dormitory fund, and also there is no statutory authority which would authorize a school board to require eligible students to utilize the facilities of the dormitory, and if they do not use the dormitory, then the payment in lieu of transportation shall be withheld.

Therefore, your first question must be answered in the negative as a board of trustees has not the authority to require the use of dormitory facilities in lieu of transportation or payments to the parents or guardians. However, this does not mean that a school district may not own or lease a dormitory, but the district having supplied the dormitory facilities, it is then a matter of contract between the district and the parents of the students the amount that shall be paid for room and board. The amount received by the parents under Chapter 152, Laws of 1941, as amended, may be used by the parents in payment or part payment toward the support of the child in the dormitory in event the parents contract to have the child live in the dormitory.

Your second question is also answered by the above quoted portion of Section 7 of Chapter 152, Laws of 1941, as amended. The payment in lieu of transportation is paid to the parents or guardian and is not a divisible amount. The full amount must be paid to the parents or guardians, and it is discretionary with the parents whether the child board or room at the dormitory or elsewhere, or whether the parents transport the child. If there were a withholding of the county portion, the result would constitute a discrimination against those children who did not board or room at the dormitory.

Your third question has been answered by the foregoing as I have stated that there is no power of discrimination on the part of the board of trustees. Also the board is without the authority to require a student who

receives services in lieu of transportation to live at the dormitory. The amount paid under Section 7, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945, is paid in lieu of transportation and there is no provision or condition that the payment will be made if the student does not live at a dormitory. The board having determined to furnish transportation or services in lieu thereof, must proceed under and in conformity with the provisions of Chapter 152, Laws of 1941, as amended. We must take the law as the legislature has enacted it.

It is therefore my opinion:

1. A board of school trustees does not have the authority to require students to board and room in a district dormitory in lieu of furnishing transportation. Parents or guardians receiving transportation money for students have discretion to select the place where said students may board and room, which may or may not be the district dormitory.

2. A board of trustees has not the authority to withhold a portion of the amount fixed by Section 7, Chapter 152, Laws of 1941, as amended, for the district dormitory, but must pay the full amount to the parents or guardians.

3. A school board has no authority to withhold the amount payable in lieu of transportation, if the student elects not to live at the district dormitory.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General