

Dear Miss Ireland:

You have submitted for my opinion the following questions concerning the transfer and transportation of high school students:

1. If a county high school board of a county in which a county high school operates a regular school bus over an established bus route and daily comes to within less than $1\frac{1}{2}$ miles from the homes of high school students, must the county superintendent transfer these high school students to another high school in another county.

2. Does a board of trustees in a school district, operating an elementary school in a county maintaining a county high school, have any authority over the transfer of high school students from one county to another county?

3. May a board of trustees use elementary school funds to provide transportation for high school purposes?

Your first question is answered in Section 1262.81, Revised Codes of Montana, 1935, as amended by Chapter 217, Laws of 1939, and Chapter 219, Laws of 1943, which reads in part as follows:

"The attendance of any eligible high school pupil at an accredited high school outside of the county of his residence, either within or without the state, 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 ($1\frac{1}{2}$) 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 5th, by the parents or guardian of the pupil for whom such transfer is desired . . .

"In all other cases the county superintendent of schools may at his discretion authorize any eligible pupil to attend a high school in a county outside his residence."

Opinion No. 66.

Schools and School Districts—Transportation—Transfer of High School Students—Budgets—Counties.

Held: 1. It is not mandatory for a county superintendent of schools to authorize the transfer of high school students to another high school in another county when the students reside within less than one and one-half miles from an established bus route and a county high school is operated in the county of the students' residence. However, in the discretion of the county superintendent, the transfer may be authorized.

2. The board of trustees of an elementary school has no authority over the transfer of high school students from one county to another county.

3. A board of trustees does not have the authority to use elementary school funds for the transportation of high school students.

September 13, 1945.

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

In your question you state that the pupils reside less than one and one-half miles from an established bus route. The three elements which must be present before it is mandatory for the county superintendent to authorize the attendance and transfer of a student to a high school in a county other than that of his residence are that the pupil lives:

1. More than three miles from the nearest high school in the county of his residence;
2. More than one and one-half miles from an established bus route operated by a high school located in the county of his residence;
3. Closer to a high school of an adjoining county than to any high school located in the county of his residence.

If the above three conditions are not all met, as in the facts you submit in that the student lives within one and one-half miles from an established bus route, then it is not mandatory, but discretionary for the county superintendent to authorize the attendance and transfer of the student to a high school in a county outside of his residence.

In answering your second question, it is necessary to consider the powers of school trustees. In *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188, 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. The statute granting power must be regarded both as a grant and a limitation upon the powers of the board."

It is apparent from the foregoing that school trustees must be able to designate statutory authority for their actions.

Section 1262.81, Revised Codes of Montana, 1935, as amended, provides for the transfer of high school students outside the county of the students' residence, and the county superintendent's authorization and not that of any board of school trustees is the only authority necessary.

Your third question is answered by Chapter 152, Laws of 1941, as amended. Section 1 of Chapter 152 provides in part as follows:

"The board of trustees of any school district or county high school within the State of Montana shall have the power to furnish transportation to and from school for all pupils residing within their district, who are enrolled in the public schools of their district . . ." (Emphasis mine.)

From the language used in the above quoted, and in particular, the emphasized portion, it is apparent that the legislature intended to permit school boards to provide transportation for children who are eligible to attend the schools over which the school board has jurisdiction. Also Section 14 of Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, provides in part as follows:

"The board of trustees of any school district maintaining an elementary school, or schools, or providing for the transportation of its pupils to attend an elementary school or schools, outside of the district, or furnishing services in lieu thereof, shall have the authority and it shall be its duty to provide and adopt a complete transportation budget therefor . . ."

In other words, an elementary school district may budget only for its own pupils and not for high school students residing within the elementary school district.

Therefore, under the law as given by the legislature, it is my opinion:

1. It is not mandatory for a county superintendent of schools to authorize the transfer of high school students to another high school in another county when the students reside within less than one and one-half miles from an established bus route and a county high school is operated in the county of the students' residence. However, in the discretion of the county superintendent the transfer may be authorized.

2. The board of trustees of an elementary school has no authority over the transfer of high school students from one county to another county.

3. A board of trustees does not have the authority to use elementary school funds for the transportation of high school students.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General