

Opinion No. 72.**Schools—Public Schools.**

Held: The board of school trustees may not lawfully make any rule or regulation prohibiting the attendance of a child who is a resident of its district and who has attained the age of six years from entering and attending such district free public school.

September 26, 1945.

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

Dear Miss Ireland:

You have asked me if a board of school trustees may by rule or regulation determine that a child who has not reached the age of six before October 1st of the school year, or any other arbitrary date, and who is residing with his parents in the district, may not attend the public school during the school year.

In answering your question, it is necessary to refer to the provisions of our State Constitution which governs this question. Section 1, Article XI, provides:

"It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools."

Section 7, Article XI, Montana Constitution, provides:

"The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years." (Emphasis mine.)

Section 1056, Revised Codes of Montana, 1935, provides in part:

"Every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided . . ."

The above quoted constitutional provision and statute are mandatory.

"The enjoyment of these privileges are enforceable rights vouchsafed to all who have legal right to attend the public schools . . ."

"The advantage, or benefit hereby vouchsafed to each child, of attending a public school is, therefore, one derived and secured to under the highest authority and sanction of positive law.

"The constitutional guaranties involved in this case are imperative and must be given effect." (Piper et al. v. Big Pine School District, 193 Cal. 664; 22 Pac. 926, 927, 930.)

Boards of school trustees may adopt all reasonable rules and regulations in the operation of the schools under their jurisdiction, as authorized by law, or that are necessarily implied from such law, but such rules and regulations must not contravene the State Constitution or the statutes.

The very essence of our Constitution and state laws dealing with our public schools seeks the result of having every eligible child in attendance in said schools.

Subdivision 10 of Section 1015, Revised Codes of Montana, 1935, as amended by Chapter 103, Laws of 1943, provides that every school board, unless otherwise specially provided by law shall have the power and it shall be its duty:

"To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six (6) years of age where the interest of the school requires such exclusion."

Therefore, in the event the board of school trustees, in their sound discretion, determine that the interest of the school requires that they exclude from the school all children under the age of six years, they have the authority to take such action, but upon the child or any child becoming six years of age, he has the constitutional and statutory right to enter the said school and it is mandatory upon the board of school trustees that he may do so.

Therefore, under our Constitution and statutes, it is my opinion that the board of school trustees may not lawfully make any rule or regulation pro-

hibiting the attendance of a child who is a resident of its district and who has attained the age of six years from entering and attending such district free public school.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General