

**Opinion No. 74.**

**School and School Districts—Transportation of Private School Pupils—Trustees—Schools—Pupils, school transportation.**

**Held:** School trustees have the discretionary power to permit pupils attending private or paro-

**chial schools to ride on public school busses provided there is ample room on the busses and the parents or guardians of such children pay their proportionate share of the cost of such transportation.**

September 29, 1945.

Mr. Wilbur P. Werner  
County Attorney  
Glacier County  
Cut Bank, Montana

Dear Mr. Werner:

You have requested my opinion concerning Section 8, of Chapter 152, Laws of 1941. You ask in particular whether the power to issue a permit to students attending a private school to ride on a public school bus is discretionary or mandatory.

Section 8 of Chapter 152, Laws of 1941, provides:

"Any child attending other than a public school may secure from the clerk of the school district a permit to ride on a public school bus, provided, that, for such service the parents or guardian of the child shall pay their proportionate share of the cost of such transportation."

While the above section provides that the clerk issues the permit, yet it is the school board which prescribes the rules and the clerk acts under the direction of the board. Such a procedure is in accord with the provisions of Section 1015, Revised Codes of Montana, 1935, as amended, which 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 government of schools under their supervision . . ."

A former Attorney General considered Chapter 152, Laws of 1941, and said in Opinion No. 228, Volume 19, Report and Official Opinions of the Attorney General, in regard to the act's application to the transportation of pupils enrolled in public schools that:

"Section 1053 of the Revised Codes of Montana, 1935, defines 'public school' as follows:

"'A public school is a school established and maintained under the laws of this state at public expense and comprising the elementary grades, and, when established, the kindergarten and the high school including all the junior and senior grades of high school work.'

"If a child were enrolled in a private or a parochial school he would no longer be a 'public school pupil' within the meaning of the title of Section 1 of the Transportation Act and would not be entitled to transportation or payment in lieu thereof. It is my opinion public school moneys may not be expended to pay transportation to a student attending a private or parochial school. Under Section 8 of Chapter 152 of the Laws of 1941 provision is made for allowing children attending private school to ride on public school busses, provided the parent or guardian pays the proportionate part of such bus transportation. This clearly indicates no public school money is to be spent for private school pupils either directly or indirectly."

As indicated in the above quoted opinion, the legislative intent was to provide transportation facilities for pupils attending public school and not those attending private or parochial schools. However, Section 8 of Chapter 152, offers the facilities to those attending private or parochial schools provided the parent or guardian pays the proportionate part of such bus transportation. The transportation of the pupils attending the public schools being the primary purpose of the act, the facilities would be available to those attending private or parochial schools after the public school pupils had first been taken care of. This would mean that if there were room in the school bus, the pupils attending the private and parochial schools could be accommodated.

Without doubt it was not the intent of the legislature to permit school boards to arbitrarily exclude pupils attending private or parochial schools, but in fact, it is the duty of school trustees to permit the use of the facilities if it can be done without over-

crowding or additional expense to the district.

It is therefore my opinion that under Section 8, Chapter 152, Laws of 1941, school trustees have the discretionary power to permit pupils attending private or parochial schools to ride on public school busses provided there is ample room on the busses and the parents or guardians of such children pay their proportionate share of the cost of such transportation. The discretionary power lodged in the school trustees is not to be used in any arbitrary or capricious manner, but is to be exercised with the view of first accommodating the public school pupils and then the private or parochial school pupils.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General