

Opinion No. 85.

Schools and School Districts—Budgets
Transfer of Pupils, transmittal of tuition funds for—County Treasurer—
Pupils, Transfer of.

Held: A county treasurer is not authorized to transmit funds from a high school district of the residence of transfer pupils to a different high school district where the pupils attend school unless requisite budget has been

adopted as provided in Section 1263.8, Revised Codes of Montana, 1935, as amended, and Section 1263.11, Revised Codes of Montana, 1935, as amended, and the transfer is authorized and the requisite notice given to the county treasurer by the county superintendent of schools of the pupils' residence and the superintendent or principal of the schools attended, within the times and in the manner specified by Section 1262.81, Revised Codes of Montana, 1935, as amended.

October 23, 1945.

Mr. Chester E. Onstad
County Attorney
Powder River County
Broadus, Montana.

Dear Mr. Onstad:

You have requested my opinion concerning the following facts:

High school pupils resident in Powder River County, Montana, have attended high school in an adjacent high school district in Sheridan County, Wyoming. The Sheridan high school now requests payment for tuition of those students who attended the Wyoming high school during the school years 1942-1943, 1943-1944, and 1944-1945. The county superintendent of schools of Powder River County has authorized the attendance of some of the pupils in the Sheridan school, but the county treasurer of Powder River County was never advised the names or number of pupils so authorized to attend. The superintendent of schools of Sheridan County has not given written notice to the county treasurer of Powder River County, after July 1, 1943, of the names and number of days attendance of Powder River County pupils in the Sheridan high school.

The statute applicable to the question of payment of tuition is Section 1262.81, Revised Codes of Montana, 1935, as amended by Chapter 217, Laws of 1939, and Chapter 219, Laws of 1943.

The payment of tuition for the school year 1942-1943 would come under Section 1262.81, as amended by Chapter

217, Laws of 1939, and the question of payment for the school years 1943-1944 and 1944-1945 would come under Chapter 219, Laws of 1943.

Under Section 1262.81, as amended, the attendance of a pupil at a high school outside the county of his residence must be authorized by the county superintendent of schools of the county of the pupils' residence after proper application has been made if there is to be any transfer of funds. After the adoption of the high school budget, the county superintendent of the county of the pupils' residence must notify the county treasurer of the names of the pupils authorized to transfer, the name and county of the high school to which transfer is to be made and amount appropriated for each transfer pupil. In December and June of each school year, the county treasurer transmits to the county treasurer of the county of the high school where the pupils attend, the amount apportioned for each pupil.

The foregoing are the pertinent portions of Section 1262.81, as amended by both chapters, in regard to the questions being considered with the additional requirement that after July 1, 1943, under Chapter 219, Laws of 1943, the superintendent or principal of each high school where the transfer pupils attend must give written notice to the county treasurer of the county in which the pupils reside of the number of days attendance of each of the transferred pupils.

Under Section 1263.8, Revised Codes of Montana, 1935, as amended by Chapter 217, Laws of 1939, and Chapter 219, Laws of 1943, **provision must be made in the high school budget for a fund for transfer pupils.** While under the two chapters there is a different manner for computing the amount to be placed in the transfer fund, and also the amount of payments, yet the budget from which payments are made each December and January is that adopted in the preceding month of August. Section 1263.17, Revised Codes of Montana, 1935, provides that all appropriations shall lapse at the end of the school year and as a result, unexpended funds are utilized in the next budget.

The county treasurer of Powder River County was not notified by the county superintendent of his county of the names and the school attended by transfer students and therefore was not

authorized to transmit the funds to the county treasurer of Sheridan County, Wyoming, for the Sheridan high school. Also the failure after July 1, 1943, of the superintendent or principal of the Sheridan high school to notify the treasurer of Powder River County of the days of attendance of transfer students is additional reason why the transmittal of funds was not made.

Under Subsection 5 of Section 4750, Revised Codes of Montana, 1935, a county treasurer may disburse money only as authorized by law. Under the facts as given, the requisite notices were not given to the county treasurer, and no payments were made, and the times designated by statute for payments have now passed and the funds from which payment could have been made are not now available as they have become merged into new budgets. Therefore, the Sheridan high school is precluded from receiving payment.

It is to be regretted that the Sheridan high school is deprived of the amount of tuition due for transfer students from Montana, and particularly so in view of the close and friendly relationship between Wyoming and Montana. Both states have cooperated with the other in their joint endeavors and the dealings of one state with the other have always been marked by fairness and harmony. However, we must take the Montana law as given us by the Montana legislature.

It is therefore my opinion that a county treasurer is not authorized to transmit funds from a high school district of the residence of transfer pupils to a different high school district where the pupils attend school unless requisite budget has been adopted as provided in Section 1263.8, as amended, and Section 1263.11, as amended, and the transfer is authorized and the requisite notices given to the county treasurer by the county superintendent of schools of the pupils' residence and the superintendent or principal of the schools attended, within the time and in the manner specified by Section 1262.81, as amended.

Sincerely yours,

R. V. BOTTOMLY,
Attorney General