

the county of the child's residence.

February 14, 1947

Mr. Herb. W. Conrad, Jr.
 County Attorney
 Pondera County
 Conrad, Montana

Dear Mr. Conrad:

You have requested my opinion concerning the following:

Prior to the school year of 1945-1946 and within the time required by law the Board of Trustees of School District No. 19 in Pondera County gave its written permission for five elementary school children residing in School District No. 26 of Teton County to attend school in School District No. 19 of Pondera County. The superintendent of schools of Teton County gave her consent to the attendance of said children at School District No. 19. The budget for School District No. 26 of Teton County included an item for the transfer of funds to pay the educational costs of the school in Pondera County for the five children, but the county superintendent in Teton County did not notify the treasurer and request a transfer of the funds. You ask if the Pondera County School District may recover the amount due for the attendance of these children at the Pondera County School.

You also advise there are children from Teton County who are attending school in Pondera County, but the superintendent of schools of Teton County refused to grant permission for such attendance and the school district in Teton County refuses to pay the costs for such attendance.

Your questions come within the provisions of Chapter 203, Laws of 1943, which provides in part:

"Children may attend public elementary schools . . . in a district in an adjoining county . . . when written permission is secured from the Board of Trustees of the District in which they are to attend school and when written permission has been given by the county superintendent of schools of the County in which the children reside."

Opinion No. 11

Schools, Attendance Outside of District.

Held: A school district may recover under the law the amount of the cost of educating a child in the elementary school from the school district of the child's residence when the requisite permission for attendance had been given. A school district is not required to permit the attendance of a child resident in another district at its elementary school when the child has not received the requisite permission for transfer from the county superintendent of

The proper written permissions were given for the attendance of the five children in the school year 1945-1946 and the liability of the district of the residence is apparent from the following quoted portion of Chapter 203:

"When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, the actual cost of educating a child in the school attended."

While Chapter 203 makes it the duty of the county superintendent of the county of the child's residence to notify the treasurer the child is attending school in another district, yet the failure to notify will not relieve the school district of the child's residence of the liability. The liability becomes fixed upon the requisite permission being granted by the county superintendent of the county of the child's residence and also of the board of trustees of the district educating the child. It is to be noted the board of trustees of the school district in which the child resides is not required nor has it the authority to grant or deny permission for the attendance of a child in another district.

Section 1022, Revised Codes of Montana, 1935, provides a school district "may sue and be sued."

It is, therefore, my opinion a school district may recover under the law the amount of the cost of educating a child in the elementary school from the school district of the child's residence when the requisite permission for attendance had been given.

Under the facts given in your second question, the county superintendent of the county of the child's residence did not give permission for attendance in the elementary school located in your county. Such permission is a condition precedent to the liability and also to attendance under Chapter 203.

Under certain conditions enumerated in Chapter 203, "permission must be granted for such attendance in another district." It is the duty of both the county superintendent of the county of the child's residence and the board of trustees of the school to be

attended to grant permission for attendance in another district when such conditions are met and an appeal may be taken to the state superintendent of public instruction to remedy any unwarranted refusal to grant permission.

It is, therefore, my opinion a school district is not required to permit the attendance of a child resident in another district at its elementary school when the child has not received the requisite permission for transfer from the county superintendent of the county of the child's residence.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.