

Opinion No. 57

Schools—Transportation Schedule,
Alteration of

Held: The alteration of the transportation schedule in accordance with subsection 8 of Section 7 of Chapter 152, Laws of 1941, as amended, is discretionary with the County Superintendent of Schools. Such an alteration must be approved by the State Superintendent of Public Instruction and cannot be demanded as a matter of right by the parents of the children concerned.

August 19, 1947

Mr. M. L. Parcels
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Parcels:

You have requested my opinion as to whether the board of trustees of a school district has discretionary power to classify students who live more than three miles from an established bus route under subsection 8, Section 7, Chapter 152, Laws of 1941, as amended by Chapter 189, Laws of 1943, and Chapter 116, Laws of 1945.

Subsection 5 of Section 7, Chapter 152, Laws of 1941, as amended, provides:

“School children living within one and one-half (1½) miles of an established bus route shall not be eligible for transportation aid, other than the services of the established route. Children living more than one and one-half (1½) but less than three (3) miles from such route shall receive transportation aid of

one-half (½) the rates given in subsection one (1) of the schedule set up in this section. Children living three (3) miles or more from such bus route shall receive transportation aid on the basis provided in the schedule fixed in this section.”

The above quoted section requires the payment of transportation to children who live more than a mile and one-half from an established bus route.

Subsection 8 of Section 7, Chapter 152, Laws of 1941, as amended, states that in isolated cases “this schedule may be altered by the county superintendent of schools, with the consent and approval of the state superintendent of public instruction” and payments made in amounts greater than the amounts fixed by the schedule.

Under the facts submitted it does not appear that the school in the district has been closed, but the basis for transportation aid is that the children live more than three miles from the bus route. As was observed above, the children are eligible to transportation in accordance with the schedule. Subsection 8 was enacted to take care of the unusual situation such as the closing of a school or the difficulties of transportation, but the alteration of the schedule is permitted by the county superintendent with the consent of the state superintendent of public instruction. The use of the word “may” together with the requirement of approval indicates that the change in the schedule is discretionary with the county superintendent and not mandatory and that justification must be shown in each case.

It is, therefore, my opinion that the alteration of the transportation schedule in accordance with subsection 8 of Section 7 of Chapter 152, Laws of 1941, as amended, is discretionary with the County Superintendent of Schools. Such an alteration must be approved by the State Superintendent of Public Instruction and cannot be demanded as a matter of right by the parents of the children concerned.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General