

Opinion No. 135**Schools—School Districts—Transportation—Compulsory Attendance.**

- Held:** 1. When a School Board closes a school in a school district the Board is not required to furnish actual transportation by bus or rail, but rather may pay to the parent or guardian the cost of transportation in accordance with the schedule of payments provided by law.
2. Sections 75-2901 and 75-2906, Revised Codes of Montana, 1947, provide a procedure for compelling a parent to send children within the school age to school.

November 24th, 1950.

Mr. Roy W. Holmes
County Attorney
Carter County
Ekalaka, Montana

Dear Mr. Holmes:

You have requested my opinion on the following questions on behalf of the County Superintendent of Schools of your County.

1. May the Board of Trustees of a school district close a school in a district and merely pay the parents of pupils for transporting the pupils to another school, or must the trustees furnish actual transportation by bus or other vehicle?
2. How may a parent who refuses to send his children to school be forced to do so?

Section 75-3404, Revised Codes of Montana, 1947, was originally enacted as Section 4, Chapter 152, Session Laws of 1941, and provides in part as follows:

"The Board of Trustees shall have the power to close any elementary school within the district, and **transport** the pupils to

another school or schools within that district, when the Board deems such act to be for the best interests of all the pupils attending school. . . ."

It is clear that the Board of Trustees may close a school in a district, and the question then arises as to what is meant by the word "transport" in the above section.

Section 75-3402, Revised Codes of Montana, 1947, which was enacted as Section 2, Chapter 152, Session Laws of 1941, defines what is meant by the term "transportation" as that term is used in Chapter 152 of the Laws of 1941. This section provides:

"Unless a different meaning is plainly required by the context, 'transportation' shall, in this act, mean (1) the actual transporting of pupils who live three (3) or more miles distant from a public school, by bus, rail or otherwise; (2) the providing of any services whereby the school board is relieved of actually transporting such pupils, such as paying parent or guardian for transportation, paying rent or board or any part thereof and providing supervised correspondence study or supervised home study."

The context of Section 75-3404, supra, clearly indicates that the word "transport" as used therein is defined by Section 75-3402, supra. Therefore, it is my opinion that if the Board of Trustees of a school district closes a school it may pay the parent or guardian in accordance with the schedule set forth in Section 75-3407, Revised Codes of Montana, 1947, as amended by Chapter 200, Session Laws of 1949, and need not provide actual transportation by bus, rail, or otherwise. The purpose of giving the term "transportation" a dual meaning in Chapter 152, Session Laws of 1941, was to allow a School Board to exercise its discretion and provide for payment to parents for transportation when circumstances were not such as to warrant the supplying of actual transportation facilities by the school district.

Sections 75-2901 to 75-2906, inclusive, make it compulsory that children between the ages of eight and sixteen years of age be sent to a school in which the basic language taught is English. Section 75-2901, as amended by Chapter 61, Session Laws of 1949, provides in part as follows:

". . . Any parent, guardian or other person having the care and custody of a child between the ages of eight (8) and sixteen (16) years, who shall fail to comply with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars (\$5.00) nor more than twenty dollars (\$20.00)."

Thus, a parent who refuses to send his child to school may be found guilty of committing a misdemeanor, and subject to a fine.

However, I believe that Section 75-2905, Revised Codes of Montana, 1947, which provides an alternate procedure in lieu of a fine is

perhaps a more effective procedure to compel a parent to send his child to school. This section provides that the truant officer may notify the parent in writing of the nonattendance of his child and of the consequences of continued nonattendance, and require the parent to cause the child to attend school within two days from the date of the notice. The statute then provides as follows:

“Upon failure to do so, the truant officer shall make complaint against the parent, guardian, or other person in charge of the child, in any court of competent jurisdiction in the district in which the offense occurs for such failure, and upon such conviction, the parent, guardian or other person in charge shall be fined not less than five dollars nor more than twenty dollars; or the court may, in its discretion, require the person so convicted to give bond in the penal sum of one hundred dollars, with sureties, to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days thereafter, and to remain at such school during the term prescribed by law; and upon failure or refusal of any parent, guardian, or other person to pay said fine and costs, or furnish said bond, according to the order of the court, then said parent, guardian or other person shall be imprisoned in the County jail not less than ten days nor more than thirty days.”

Thus, through the institution of court proceedings may the County Superintendent coerce parents into sending their children to school, providing that the children are within the school age.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.