

Opinion No. 57

Schools—School Districts—Transportation of Pupils, Discretionary With Board of Trustees.

- Held:**
- 1. Under Chapter 200, Laws of 1949, the Board of Trustees of any School District or County High School has discretionary power in the furnishing of transportation to the students of the District.**
 - 2. If the Board of Trustees elects to furnish transportation to any students within the District, they must furnish such transportation to all students within the District.**

September 21, 1949.

Mr. James H. Higgins
County Attorney
White Sulphur Springs, Montana

Dear Mr. Higgins:

You have requested my opinion concerning the interpretation to be placed on the word "may" as found in Section 1, Chapter 200, Laws of

1949, in which the following language is used, "The Board of Trustees of any School District or County High School within the State of Montana may furnish transportation to and from schools for all pupils residing in their Districts. . . ."

Prior to the amendment of Section 1, Chapter 152, Laws of 1941, by Chapter 200, Laws of 1949, it was provided that the Board of Trustees "shall have the power to " furnish transportation and the legislature by the amendment substituted the word "may" for "shall have the power to." The question thus presented is whether the use of the word "may" is to be construed as mandatory. Prior to the amendment of Section 1, Chapter 152, supra, this office in Opinion No. 111, Vol. 19, Report and Official Opinions of the Attorney General, held that the trustees of a School District had a discretionary power in the furnishing of transportation. In Opinion No. 240, Vol 20, Report and Official Opinions of the Attorney General the same conclusion was reached and it was also held that if the Trustees decided to furnish transportation to any students they must furnish it to all students within the District.

The legislature had before it the above cited interpretations of Section 1 of Chapter 152, Laws of 1941 when the Section was amended by Chapter 200, Laws of 1949. The substitution of the word "may" for "shall have the power to" is not, in my opinion, such an expression of the legislative intent as to indicate a material change in the interpretation to be placed on the statutes. Our Supreme Court has frequently considered the meaning of the word "may" and in *Durland v. Prickett*, 98 Mont, 397, 39 Pac. (2d) 652 the court quoted from an earlier Montana case, in construing the word, the following:

"This word is sometimes permissive only; sometimes it is imperative. Legislative intent determines whether it is directory or mandatory."

It is more than a reasonable assumption that if the legislature had intended to deprive the trustees of their discretionary power to furnish transportation more explicit language would have been used, than the substitution of the word "may."

It is, therefore, my opinion that under the provisions of Chap. 152, Laws of 1941, as amended by Chapter 200, Laws of 1949 the Board of Trustees of a school has discretionary power in the furnishing of transportation to the students of the District.

It is also my opinion that if the Trustees furnish transportation to any students they must furnish transportation to all within the limitations of the law.

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