

**Opinion No. 73****School Districts, Abandonment of—County Superintendent of Schools,  
Power to Declare Abandonment, When—School Trustees—  
Transportation, Provided For By District—Exception.**

**Held:** County Superintendent of Schools must declare a school district abandoned where school has not been held for three (3) consecutive years, and the School Trustees have not provided transportation in school bus operated under contract let by school district. Furnishing of any service in lieu of transportation to children of district will not preclude district from being declared abandoned.

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December 1st, 1949.

Mr. Robert J. Nelson  
County Attorney  
Cascade County  
Great Falls Montana

Dear Mr. Nelson:

You have requested my opinion concerning the power of the County Superintendent of Schools to declare the abandonment of a school district in which school has not been actually held during the last three years. You advised me that the children of the district have been attending school in a nearby district and the district of their residence has been paying to the parents of the children money in lieu of providing actual bus transportation.

Section 970, Revised Codes of Montana, 1935, as amended by Chapter 168, Laws of 1943, provides that the County Superintendent "must declare a school district abandoned when terms of school aggregating at least twelve (12) months have not been actually held in a district during a period of three (3) consecutive years." Section 970 contains an exception which is pertinent to the facts which you submitted and reads as follows:

"That if any such district has provided transportation for all children of school age, living within the district, to another district for the purpose of attending school therein for a term of at least six (6) months during each of such three (3) years, such transportation to be by means of a safe and proper omnibus or omnibuses, driven or operated by a competent driver, or drivers, under contract let by the Board of Trustees of the district, and which driver, or drivers, shall be under proper and sufficient bonds, such transportation shall be deemed equivalent to the actual holding of school in such district for a term of six (6) months in each year, and such district shall not be ordered abandoned."

It is to be noted in the above quoted exception that bus transportation under contract let by the trustees of the district will relieve the district from any question of being abandoned. Section 2 of Chapter 152, Laws of 1941 defines "transportation" as used in the school transportation act to include payments to parents in lieu of furnishing actual bus transportation. As Section 970, as amended, deals specifically with the abandonment of school districts its terms, which are unambiguous, will control the determination of the manner of declaring school districts abandoned.

This office in Opinion No. 182, Vol. 19, Report and Official Opinions of the Attorney General considered the exception found in Section 970 and it was stated therein as follows:

"In making the exception to the law, the Legislative intent is clear to the effect other modes of transportation, such as rent, board and room, paying parents or guardian and providing supervised correspondence study or supervised home study, are not to be considered."

This office has held in many opinions that the actual transportation in school buses operated by the district is necessary to prevent the abandonment of a district under the provisions of Section 970, Revised Codes of Montana, 1935. See Opinion No. 344, Vol. 19, Report and Official Opinions of the Attorney General for an extensive discussion of the interpretation of the statute in question.

It is, therefore, my opinion that the County Superintendent of Schools must declare a school district abandoned where school has not been held for three (3) consecutive years and the trustees have not provided transportation in a school bus operated under a contract let by the district and that the furnishing of any service in lieu of transportation to the children of the district will not preclude the district from being declared abandoned.

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