

Opinion No. 85**Schools and School Districts—County
Transportation Committee—Bus
Routes—Transportation of
Elementary Pupils.**

- Held:** 1. It is the duty of the board of trustees of a third class district to request the county superintendent of schools to call an election submitting the question of annexation when a petition signed by twenty per cent of the qualified electors of the school district has been presented to the board of trustees of such third class district.
2. Upon complaint being made to the county transportation committee such committee has the authority to fix bus routes and to order one school district to discontinue transporting resident elementary pupils of another district who have not been granted permission to attend school in a district other than that of residence.

May 19, 1952.

Mr. Charles B. Sande
County Attorney
Yellowstone County
Billings, Montana
Attention: Mr. Arnold A. Berger,
Deputy

Dear Mr. Sande:

You have requested my opinion as to whether it is the duty of trustees of a third class school district, which has received a petition signed by twenty per cent of the qualified electors of the district, to request the county superintendent to annex the district to a second or first class district. You have also asked if the county transportation committee may fix bus routes and prevent one school district from picking up elementary children of another district and transport them in the high school bus to the district operating the bus.

In answering your first question it is necessary to consider the provisions of Section 75-1813, Revised Codes of Montana, 1947, as amended by Chapter 32, Laws of 1951, which defines the procedure for the consolidation of

school districts. Subdivision 5 of Section 75-1813, Revised Codes of Montana, 1947, as amended, is pertinent to your question and reads in part as follows:

"When, in the interest of reducing cost of operation or improving the school service for pupils, a board of trustees, of a third class district, shall by a majority vote of its members or at the request of twenty per cent (20%) of the qualified electors of the districts indicated by a petition, ask the county superintendent of schools to annex the territory and property of such third class district to any second or first class district, the county superintendent shall, upon an approving vote of the trustees of the district with which the annexation is sought, authorize an election on such annexation within not less than twenty (20) nor more than thirty (30) days."

The above quoted fixes two methods for requesting the county superintendent to call an election. The first is by a majority vote of the board of trustees and the second by a petition addressed to the board of trustees of twenty per cent of the qualified electors of the district seeking to be annexed to a first or second class district. In both instances the trustees of the district with which annexation is sought must consent and then it is the duty of the county superintendent to call an election. Under the facts you presented it appears that twenty per cent of the qualified electors petitioned trustees of their district to request that the county superintendent call an election and that the trustees have failed to make such a request.

It is to be noted that the above section states "a board of trustees . . . shall . . . at the request of twenty per cent of the qualified electors . . . ask the county superintendent of schools to annex . . . such third class district to any second or first class district." The duty imposed is mandatory and does not permit the trustees to exercise any discretion. If the trustees do not present the petition to the county superintendent, then they would be guilty of violation of a clear legal duty and a mandamus action will lie. Section 93-9102, Revised Codes of Montana, 1947, provides that a writ of

mandamus may be issued by a court "to compel the performance of an act which the law specially enjoins as a duty resulting from an office." State ex rel. Peterson v. Peck, 91 Mont. 5, 4 Pac. (2d) 1086. In State v. McCracken, 91 Mont. 157, 6 Pac. (2d) 869, the court said, "Mandamus is a proper remedy to compel the performance of a ministerial act or duty." The presentation of the request to your county superintendent to hold the election would certainly be a ministerial duty and should be performed by the trustees.

While no time is fixed by the statute for the trustees to request that the county superintendent call an election, it must be assumed that the trustees must perform the act within a reasonable time as the delay might well defeat the purpose of the statute. State ex rel. Venek v. Justice Court, 110 Mont. 550, 104 Pac. (2d) 14.

It is therefore my opinion that it is the duty of the board of trustees of a third class district to request the county superintendent of schools to call an election submitting the question of annexation when a petition signed by twenty per cent of the qualified electors of the school district has been presented to the board of trustees of such third class district.

Your second question is concerned with the duties and powers of the county transportation committee. The county transportation committee was first authorized by Chapter 189, Laws of 1951, which amended Section 75-3412, Revised Codes of Montana, 1947. The committee was granted broad powers as the statute provides:

"It shall be the duty of the county transportation committee to approve bus routes and applications for increased transportation payments, and to act in all controversies resulting from transportation matters."

All bus routes are subject to the approval of the transportation committee and any variance in route from the approved route would raise a controversy within the meaning of the above quoted section within the jurisdiction of the committee.

Picking up elementary school children in one district and transporting them to the district operating the bus is contrary to Section 75-3401, Revised Codes of Montana, 1947, as amended

by Chapter 189, Laws of 1951, if such children were not authorized to attend the schools of the district operating the bus. The prohibition is found in Section 75-3401, as amended, which reads in part as follows:

"The board of trustees of any school district . . . may furnish transportation to and from school for all pupils residing within their district, who are enrolled in the public schools of their district, or who have been granted permission to attend a school in another district . . ." (Emphasis supplied)

Permission to attend school in a district other than the residence of a child must be given in the manner and as provided in Section 75-1630, Revised Codes of Montana, 1947, as amended by Chapter 207, Laws of 1951.

It is therefore my opinion that upon complaint being made to the county transportation committee such committee has the authority to fix bus routes and to order one school district to discontinue transporting resident elementary pupils of another district who have not been granted permission to attend school in a district other than that of residence.

Very truly yours,
ARNOLD H. OLSEN
Attorney General