

Opinion No. 68.**Schools and School Districts—Term of School for Children Transported to Another District—Cash Deposit for Supplies.**

HELD: 1. Transportation by a school district of children to another district for a school term of six months complied with the statute prior to July 1, 1951, and, subsequently, the term of school for such children was fixed at 180 days. Compliance with these standards would preclude the district from being declared abandoned.

2. It is within the discretionary powers of school trustees to require a cash deposit by children to cover breakage and excessive use of supplies in the courses designated in Section 75-4232, R. C. M., 1947.

March 30, 1954.

Mr. Henry I. Grant, Jr.
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

You have requested my opinion concerning the length of time for each school year that transportation of children by one district to another school must be furnished to preclude abandonment of the district.

You have also asked if school trustees may require a cash deposit to cover breakage and excessive use of supplies.

In answering your first question, it is important to consider Section 75-1522, R. C. M., 1947. Prior to amendment, Section 75-1522, supra, provided that transportation of all children "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" will preclude the necessity of declaring a school district abandoned. The amendment to this section by Chapter 109, Laws of 1951, fixed the term of the school year for a period of "at least one hundred eighty (180) days each year."

The precise problem is whether the 180 day provision of the amendment applies to each of the preceding three years. If such a construction were given to the amendment, then a retroactive effect would be given to this new statute. However, Section 12-201, R. C. M., 1947, reads as follows:

"No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared."

Our Supreme Court, in Educational Bonds Case, 68 Mont. 526, 219 Pac. 637, held:

"There is always a presumption that statutes are intended to operate prospectively only, and words ought not to have a retroactive operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute."

In view of the above presumption and the lack of clear expression that the amendment is to operate retroactively, it must be concluded that the 180 day requirement was applicable on July 1, 1951, the effective date of Chapter 109, Laws of 1951. The test for any school year prior to the amendment is a term of at least six months. A school month is defined for teachers' contracts by Section 75-2202, R. C. M., 1947, as "twenty school days, or four weeks of five days each" and such definition should be applied to the statute under consideration.

Your second question is answered by Section 75-4232, R. C. M., 1947, which states:

"The board of trustees of any school district or county high school may require pupils in the commercial, industrial arts, music, domestic science, scientific or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used."

This section contemplates reimbursement by the pupils in the designated courses for breakage and unusual use of supplies. No precise method of assessing the fees is fixed by the statute and any reasonable method will suffice. Section 75-1632, R. C. M., 1947, as last amended by Chapter 233, Laws of 1953, enumerates the duties of school trustees, one of which is:

"To prescribe and enforce rules not inconsistent with law, or those prescribed by the superintendent of public instruction for their own government of schools under their supervision."

This gives wide discretionary powers to the trustees and is in accord with the general law. See: *Whittaker v. Salem*, 216 Mass. 483, 104 N. E. 359; and *Brooks v. Shannon*, 184 Okla. 255, 86 Pac. (2d) 792.

It is, therefore, my opinion that:

1. Transportation by a school district of children to another district for a school term of six months complied with the statute prior to July 1, 1951, and, subsequently, the term of school for such children was fixed at 180 days. Compliance with these standards would preclude the district from being declared abandoned.

2. It is within the discretionary powers of school trustees to require a cash deposit by children to cover breakage and excessive use of supplies in the courses designated in Section 75-4232, R. C. M., 1947.