

Opinion No. 80.

Schools and School Districts—Transportation of Elementary Students Will Preclude Abandonment of District.

HELD: High school students may not be counted in computing the average number of children transported by any school district so as to preclude the district being declared abandoned under the provisions of Section 75-1522, R. C. M., 1947, as amended by Chapter 109, Laws of 1951.

June 28, 1951.

Mr. Paul J. Murphy
County Attorney
Judith Basin County
Stanford, Montana

Dear Mr. Murphy:

You have requested my opinion whether a school district in counting children transported may include high school children so as to avoid the abandonment of the district. You advised me that if the high school students of a district are included in the number

of children transported in each of the last three years, then an average of more than five children will have received transportation.

Section 75-1522, R. C. M., 1947, as amended by Chapter 109, Laws of 1951 states that a county superintendent must declare a school district abandoned when a school has not been operated in the district during a period of three consecutive years. Such abandonment may be avoided if the school district comes within the exception found in Section 75-1522, supra, which reads as follows:

“ . . . that if any such school district has provided transportation either by bus or by the payment to individuals, or has provided payments for board and room in lieu of transportation for an average of at least five (5) children of school age during a period of three (3) consecutive years living within the district, to another district for the purpose of attending school therein for a term of at least one hundred eighty (180) days each year. Such transportation shall be deemed equivalent to the actual holding of school in such district for a term of one hundred eighty (180) days in each year, and such district shall not be ordered abandoned.”

It is to be noted that the above-quoted portion of the statute contemplates the furnishing of transportation by the school district. An examination of Section 75-3414, R. C. M., 1947 as amended by Chapter 189, Laws of 1951, makes it the duty of the board of trustees of every school district maintaining a high school and the board of trustees of every county high school to provide a transportation budget. The sources of the funds for this budget are the State of Montana and a county-wide tax levy. One-third of the funds are received from the state and two-thirds from the county levy. The money from these two sources is limited in amount by the schedule set forth in Section 75-3407, R. C. M., 1947, as last amended by Chapter 189, Laws of 1951. A greater amount may be included in the budget by special levies either on the high school district, the county, or the school district

in a priority fixed by the statute. In no event is a levy made for the transportation of high school students on a school district as such where such school district does not maintain a high school. The conclusion must then be reached that a school district does not directly provide transportation to high school students within the meaning of Section 75-1522, supra, so that high school students can properly be included in the number transported so as to preclude the abandonment of the school district.

In construing Section 75-1522, supra, as amended, the whole section should be considered in determining the legislative intent. In *State v. District Court*, 51 Mont. 305, 152 Pac. 745, the court said:

“ . . . ‘The words, phrases and sentences of a statute are to be understood as used, not in any abstract sense but with due regard to the context, and in that sense which best harmonizes with all other parts of the statute. . . .’ ”

In applying the above-quoted rule, it is apparent that this code section is concerned only with elementary schools. Sub-section 2 of Section 75-1522, supra, states, in part, as follows:

“ . . . whenever there are five (5) or more children in abandoned territory eligible for attendance in an elementary school as determined by the county superintendent and residing more than three (3) miles from an established school in the district to which the abandoned territory is attached, the school trustees shall provide a school in such abandoned territory when requested so to do by the parents of at least three (3) of such children . . . ”

The fact that the residence of five or more elementary school students in the area makes it the duty of the trustees to open a school, leads to the conclusion that elementary school students alone constitute the test for determining the necessity of operating the school and fixes the meaning of the five children referred to in Sub-section 1 of this Act as elementary school children.

The right to attend a high school by a resident of a county is not dependent on domicile in any particular school district since Section 75-4228, R. C. M., 1947, provides:

“Attendance at any accredited high school shall be free to all eligible high school pupils residing in the county wherein such accredited high school is located except for such fees as the board of trustees are otherwise specially authorized by law to exact.”

As was pointed out above, transportation for high school students is not furnished by any school district but is an obligation of both the county and state without regard to any particular school district. It must be concluded that if a school district does not directly pay for the transportation of high school students, then a school district does not “provide transportation” within the meaning of Section 75-1522. Also, the right to attend any high school in the county is given to every student of the county without regard to residence in any particular school district.

It is, therefore, my opinion that high school students may not be counted in computing the average number of children transported by any school district so as to preclude the district being declared abandoned under the provisions of Section 75-1522 R. C. M., 1947, as amended by Chapter 109, Laws of 1951.