

Opinion No. 56

**Schools and School Districts—
Power of Transportation Committee
Discretionary Power of
Board of Trustees**

HELD: 1. That the county transportation committee must approve bus routes for transportation of children residing more than three miles distant from an established school and must also approve applications for increased transportation payments and settle all controversies arising from transportation disputes.

2. That the Board of Trustees of a school district has discretionary authority to furnish bus transportation to children residing less than three miles from an established school and the expense of the operation of such busses shall be the obligation of the school district exclusively.

3. That the transportation committee has no supervisory power over bus routes or the operation of busses which are established under the discretionary power of the trustees of a school district for the transportation of children living less than three miles from an established school.

January 5, 1956

Mr. Irving C. Pearson
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Pearson:

You have requested my opinion concerning the power and authority of the county transportation committee to approve bus routes and settle transportation controversies arising from the bus transportation of pupils who reside within three miles of the nearest public schools.

The authority of a school district to furnish transportation for school children attending a public elementary or secondary school is to be found in Chapter 34 of Title 75, R.C.M., 1947. Section 75-3401 R.C.M., 1947, reads in part as follows:

"The board of trustees of any school district or county high school within the state of Montana 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, and who reside three (3) or more miles distant, over the nearest practical route, from a public elementary or secondary school. . . ."

However, the above quoted must be read in conjunction with Section 75-3409, R.C.M., 1947, which provides as follows:

"Any child, not younger than six (6) nor older than twenty-one (21) years, whose residence is in the state of Montana, three (3) or more miles distant, over the shortest practical road, from the nearest open public elementary or public secondary school (disregarding district and county boundary lines) of the state of Montana; or whose residence is one and one-half (1½) or more miles, over the shortest practical road, from the nearest point of an established public school bus route, is entitled to transportation for each day he attends a Montana public school; . . ."

This office has previously considered the transportation law and it was held in 19 Reports and Official Opinions of the Attorney General 339, No. 213, and 20 Reports and Official Opinions of the Attorney General 304, No. 240, that the trustees have discretionary power to furnish transportation, but if transportation is furnished to any eligible school children, it must be furnished to all eligible school children. However, the transportation act grants to the school trustees discretionary authority to furnish transportation to the children who live less than three miles from a school building in that portion of Section 75-3407, R.C.M., 1947, as last amended by Chapter 191, Laws of 1955, which reads as follows:

* * *

"g. The limitations for this act shall not apply to transportation within the city or school district when the board of trustees finds it economical, convenient or desirable to transport children for a distance less than three (3) miles in order to relieve congestions in a school building or to prevent the erection

of new buildings, or when children live on an established school bus route and less than three (3) miles from school.”

The above quoted statutes should be remembered in considering the statutes pertinent to the power and authority of the county transportation committee. Section 75-3412, R.C.M., 1947, as last amended by Chapter 105, Laws of 1955, provides for the establishment of a county transportation committee and makes it the duty of the committee to settle all transportation controversies. This code section also impresses the duty on the transportation committee to approve all bus routes.

“All transportation matters in controversy shall be settled by the county transportation committee hereinafter defined. Provided, that, if the applicant for transportation feels that he has not met with justice in the decision of the county transportation committee, he may appeal to the state superintendent of public instruction, in which case the county superintendent shall send to the state superintendent of public instruction all data and evidence connected with the case.

... 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.”

The power given to the transportation committee to settle controversies is not to be construed as a grant of authority to control all transportation issues within a school district.

The board of trustees of a district first determines to transport children in one area by a bus and the route of such mode of transportation must be approved by the transportation committee.

In construing the transportation act as a whole, it must be concluded that the primary purpose of the law is to furnish transportation for children who live more than three miles from an established school. A secondary purpose of the law is to give

transportation aid to children who live more than three miles from a public school and also more than one and one-half miles from an established bus route.

That portion of Section 75-3407, R.C.M., 1947, as amended, which excludes the application of the limitations of the transportation act to the transportation of children who live less than three miles from a school is a statutory recognition that a school district may find it desirable to furnish bus transportation to relieve congestion or to prevent the erection of new buildings. However, such transportation must be paid for by the district without state aid as this type of transportation is specifically excluded from all the provisions of the transportation law. As a consequence, any supervisory power of the transportation committee is likewise precluded for the reason that the authority of the transportation committee extends only to controversies which arise under the transportation act.

Broad powers are given to the transportation committee in regard to isolated cases under subsection “h” of Section 75-3407, R.C.M., 1947, as last amended by Chapter 191, Laws of 1955. This statutory provision permits the transportation committee to grant payments of money in isolated cases in an amount greater than the schedule in lieu of bus transportation furnished by the district. While this provision is a broad grant of power to the committee in isolated cases, it does not alter the statutes heretofore referred to relating to bus transportation by the district. It is the duty of the state superintendent of public instruction to prepare a chart as a guide to the committee for such increased payments due to isolation.

It is therefore my opinion:

1. That the county transportation committee must approve bus routes for transportation of children residing more than three miles distant from an established school and must also approve applications for increased transportation payments and settle all controversies arising from transportation disputes.

2. That the Board of Trustees of a school district has discretionary authority to furnish bus transportation to children residing less than three miles from an established school and the expense of the operation of such busses shall be the obligation of the school district exclusively.

3. That the transportation committee has no supervisory power over bus routes or the operation of busses which are established under the discretionary power of the trustees of a school district for the transportation of children living less than three miles from an established school.

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