

Opinion No. 45

**SCHOOLS AND SCHOOL DISTRICTS; Attendance; non-residents—
SCHOOLS AND SCHOOL DISTRICTS; Board of Trustees; Powers;
exclusion of non-residents — SCHOOLS AND SCHOOL DIS-
TRICTS; Districts; Attendance outside of—Section 75-1630,
RCM, 1947—Section 75-1632, RCM, 1947.**

Held: The board of trustees of a school district may not refuse to admit non-resident elementary school pupils who come within the conditions prescribed by Section 75-1630, RCM, 1947.

August 7, 1962

Mr. Carl M. Davis, Esq.
Beaverhead County Attorney
Dillon, Montana

Dear Mr. Davis:

You have requested my opinion on the following question:

May the board of trustees of a school district refuse to admit pupils from another district who meet the qualifications prescribed by Section 75-1630, RCM, 1947?

In pertinent part, Section 75-1630 provides:

"Children may attend public elementary schools in districts in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the State of Montana, when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by the county superintendent of schools of the county in

which the children reside. Permission must be granted for such attendance in another district within or without the county of such children's residence when the following conditions exist:

- "1. When a child lives less than three (3) miles from a public elementary school in another district or county and three (3) or more miles from a public elementary school in the district or county of his own residence.
 - "2. When a child resides more than three (3) miles distance from a public elementary school within his own district or county and no transportation is furnished by the home district or county to such school.
 - "3. When regular bus transportation is furnished by a public elementary school in another district or county and his own district or county does not furnish transportation.
 - "4. When a family has children who must attend high school outside of its own district or county and such family also has elementary school children who can more conveniently attend the elementary grades in the same district where the high school is located, provided such elementary children live more than three (3) miles from the home school or that a parent must move to town to provide high school education for his children.
 - "5. When the county superintendent of schools of the county where the child resides, for any other reason than stated above shall approve the attendance of any child in a public elementary school in another county. In approving such attendance in another district or county, the county superintendent shall take in consideration such items as distance to school, road conditions, trading center of parents, opportunity to live with relatives, dormitory facilities, living conditions, transportation and type of educational program."
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"When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates; in the case of attendance at an elementary school with an average number belonging up to one hundred (100), the tuition to be paid shall be two hundred twenty-five dollars (\$225.00); where the school attended has an average number belonging between one hundred one (101) and three hundred (300), the tuition shall be two hundred dollars (\$200.00); and where the school attended has an average number belonging over three hundred (300), the tuition rate shall be one hundred seventy-five dollars (\$175.00) per pupil.

"It shall be the responsibility of the superintendent of schools and the board of trustees of the public elementary school receiving the pupils and county superintendent of schools of the county of the pupils' residence to determine and agree upon eligibility of

pupils transferring under the provisions of this act; provided, that an appeal may be taken to the State Superintendent of Public Instruction."

Taken by itself, this statute seems clear and unambiguous. The specific problem here arises because of that portion of Section 75-1632 which provides:

"Every school board unless otherwise specially provided by law shall have power and it shall be its duty:"

"(20) To allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room."

To resolve the apparent conflict between the statutes, resort may be had to the well established rule of statutory construction that if one statute is inconsistent with another, the later statute supersedes the earlier to that extent. **Pioneer Motors v. State Highway Commission**, 118 Mont. 333, 165 P. 2d 796. The portion of Section 75-1632 quoted above was enacted in 1913 as Paragraph 20 of Section 508, Chapter 76, Laws of 1913. The mandatory provisions of Section 75-1630 were enacted in 1943 as Section 1, Chapter 203, Laws of 1943. Thus, Section 75-1630 is the later statute and it must control.

It is therefore my opinion that the board of trustees of a school district may not refuse to admit non-resident elementary school pupils who come within the conditions prescribed by Section 75-1630.

The remedy for any inequities that may be caused by this legislation lies solely within the power of the legislature.

Very truly yours,
FORREST H. ANDERSON
Attorney General