

VOLUME NO. 34

Opinion No. 57

SCHOOLS AND SCHOOL DISTRICTS - Transportation; isolation allowance schedule. STATE BOARD OF EDUCATION - Isolation allowance schedule, mandatory upon users. Sections 75-7004, 75-7005 and 75-7019, R.C.M. 1947.

- HELD:**
- 1. The existence of any one of the circumstances of isolation set forth in section 75-7019 (3), R.C.M. 1947, is sufficient foundation upon which to base a request for an increased reimbursement rate for individual transportation of pupils in public schools.**
 - 2. The application of the isolation reimbursement schedule, promulgated by the state board of education, is mandatory upon users of the schedule.**

December 4, 1972

Mr. G. Dean Reed
Deputy Legislative Auditor
Office of the Legislative Auditor
State Capitol
Helena, Montana 59601

Dear Mr. Reed:

You have requested my opinion on the following questions concerning sections 75-7005 and 75-7019, Revised Codes of Montana, 1947:

- “1. Does section 75-7019 (3), R.C.M. 1947, require the concurrent existence of excessive distance, and impassable roads, and other special circumstances of isolation, as a condition of qualification for isolation allowances? That is, do all three circumstances have to be present or would any one circumstance suffice?”
2. Is the schedule required (section 75-7019, R.C.M. 1947) to be promulgated by the State Board of Education mandatory upon users? That is, can agencies subordinate to the board alter or not use the criteria and rates set forth in such a schedule?

Section 75-7019, *supra*, provides in part:

“The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse (*sic*) the parent or guardian on the basis of the following schedule:

* * *

“(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The board of education shall promulgate a schedule that allows varying percentage increases of the per-day individual transportation rates pre-

scribed in subsections (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred percent (100%).”

Section 75-7005, *supra*, provides in part:

“In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

“(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of education.”

Also pertinent here is section 75-7004, R.C.M. 1947, which provides in part:

“The board of education shall promulgate a schedule that establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019. The board of education also shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this Title.”

Your first question would appear to be answered by a reference to the construction of section 75-7019 (3). The conditions which must exist before isolation payments can be made, i.e., excessive distances, impassable roads or other special circumstances of isolation, are set forth in the disjunctive. In speaking of clauses or phrases of a statute expressed in the disjunctive, the Supreme Court of Montana in *Shields v. Shields*, 115 Mont. 146, 139 P.2d 528, said:

“It is apparent that under the rules of grammar each of the expressions (1) and (2) above which are connected by the disjunctive ‘or’ modify or relate to the word ‘county’. It is also a well recognized rule that where two such clauses or phrases are so expressed in the disjunctive they are co-ordinate and either is applicable to any situation to which its terms relate.”

Thus, it would appear that the existence of any one of the circumstances set forth in section 75-7019 (3), *supra*, would be sufficient foundation upon which to base a request for an increased reimbursement rate.

Section 75-7004, *supra*, makes it mandatory for the board of education to promulgate a schedule that “establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019.” A schedule was promulgated under former section 75-3407, R.C.M. 1947; however, the board has not

promulgated a new schedule since the passage of section 75-7004, supra. Any schedule duly promulgated by the board of education pursuant to sections 75-7004 and 75-7019 (3), must be considered as having the force of law. See **State ex rel. Keeney v. Ayers**, 108 Mont. 547, 92 P.2d 306. Thus, to the extent that a schedule promulgated by the board of education does not contradict legislative enactments it must be followed by agencies which are subordinate to the board.

It should be noted that the superintendent of public instruction, pursuant to section 75-7005, supra, has the power to "prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of education." It is clearly the intent of the legislature in section 75-7005, supra, that these rules, regulations and forms are meant to complement but not overrule the transportation policies of the board of education.

THEREFORE, IT IS MY OPINION that:

1. The existence of any one of the circumstances set forth in section 75-7019 (3), R.C.M. 1947, is a sufficient foundation upon which to base a request for an increased reimbursement rate for individual transportation of pupils in public schools; and
2. The percentage schedule of isolation reimbursement promulgated by the state board of education pursuant to section 75-7019, R.C.M. 1947, is mandatory upon users of the schedule in its application.

Very truly yours,

ROBERT L. WOODAHL
Attorney General