

VOLUME NO. 35

Opinion No. 53

SCHOOLS AND SCHOOL DISTRICTS — County transportation committee hearing, transcript required, waiver of; SUPERINTENDENT OF PUBLIC INSTRUCTION — Transcript on appeal, meaning of. Sections 75-5709, 75-5811, and 75-7015, R.C.M. 1947.

HELD: 1. A transcript, although not necessarily a verbatim stenographic report, is required on an appeal from a decision of the county school transportation committee to the state superintendent of public instruction.

2. A transcript of a proceeding before a county school transportation committee may not be waived in the absence of express regulations promulgated by the state superintendent of public instruction.

December 28, 1973

Mr. Douglas Y. Freeman
Big Horn County Attorney
County Courthouse
Hardin, Montana 59034

Attention: Mr. Clarence T. Belue
Deputy County Attorney

Dear Mr. Freeman:

Your office has requested my opinion on the following questions:

1. Is a transcript required for an appeal to the State Superintendent of Public Instruction pursuant to sections 75-7015 and 75-5709, R.C.M. 1947?
2. If a transcript is required by section 75-7015 and 75-5709, may the parties to a controversy heard before a County Transportation Committee waive the making of a transcript?

The general duties of a county transportation committee are set forth in section 75-7015, Revised Codes of Montana, 1947. That section provides in pertinent part at subparagraph (4) and following:

It shall be the duty of the county transportation committee to:

(4) conduct hearings to establish the facts of transportation controversies which have been appealed from the decision of the trustees, and act on such appeals on the basis of the facts established at such hearing.

After a fact-finding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal such decision

to the superintendent of public instruction who shall render a decision on the basis of the facts established at the county transportation committee hearing.

Review by the state superintendent of public instruction on appeal of a decision rendered by a county transportation committee is provided for by Montana law at section 75-5709, R.C.M. 1947, which specifically states:

The superintendent of public instruction shall decide matters of controversy when they are appealed from:

- (1) a decision of a county superintendent rendered under the provisions of section 75-5811; or
- (2) a decision of a county transportation committee rendered under the provisions of section 75-7015.

The superintendent of public instruction shall make his decision on the basis of the **transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee, documents presented at the hearing, affidavits, verified statements, or sworn testimony as to the facts in issue.** The decision of the superintendent of public instruction shall be final, subject to adjudication or the proper legal remedies in the state courts. (Emphasis supplied)

Pursuant to this statutory duty, a transcript is required at a hearing conducted by the county transportation committee.

The term "transcript" may have different meanings. A transcript, when referring to court proceedings, means complete, full stenographic notes of the verbatim testimony and of court proceedings by a court reporter. Section 93-1901, *et seq.* The services of the stenographer and the making of a verbatim transcript, however, may be dispensed with by the court, either by waiver or agreement of the parties or by the court's exercise of its discretion. **State ex rel. Stimatz v. District Court**, 74 P.2d 8, 105 Mont. 510, 514. Even without a verbatim transcript a court appeal may be perfected by an approved statement of facts pursuant to Rule 9 (c) and (d) of the Montana Rules of Appellate Civil Procedure.

In this instance we are concerned with a hearing before an administrative body and not a court, however, and the statutes referring to school appeals do not connote complete, full stenographic notes of the verbatim testimony of the hearing. Under section 75-5709, *supra*, a controversy may be appealed to the superintendent of public instruction from a decision of a county superintendent rendered under the provisions of section 75-5811 or from a decision of a county transportation committee rendered under section 75-7015. The superintendent then makes his decision on the basis of the "transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee documents". The kind of transcript required by section 75-5709,

supra, upon appeal to the state superintendent is obviously the same from both a county superintendent's hearing and a county transportation committee's hearing. The pertinent part of section 75-5811 provides:

The county superintendent shall hear the appeal and take testimony in order to determine the acts related to the controversy and may administer oaths to the witnesses that testify at the hearing. **He shall prepare a written transcript of the hearing proceedings.** The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

The decision of the county superintendent may be appealed to the superintendent of public instruction and, if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction. (Emphasis supplied)

The language of a statute must be construed in accordance with its usual and ordinary acceptance. **County of Hill v. County of Liberty**, 62 Mont. 15, 17, 203 P. 500. Since the "transcript" for appeal to the state superintendent of public instruction is prepared **by the hearing official**, it appears that a record or report of the hearing, and not a verbatim stenographic copy of the testimony and proceedings, is required by section 75-5709, supra. Certainly very few, if any, hearing officials could prepare a verbatim stenographic copy of the testimony and proceedings by themselves.

Since the state superintendent must base his decision of an appeal upon a transcript as set forth in section 75-5709, supra, such a record of the hearing cannot be waived by the parties to the controversy unless the state superintendent has specifically prescribed rules and regulations for appeal without a transcript or report of the evidence and proceedings. These rules and regulations would be analogous to the provisions relating to appeal of court proceedings without a report or transcript under Rule 9 (c) and (d) of the Montana Rules of Appellate Civil Procedure.

THEREFORE, IT IS MY OPINION:

1. A transcript, although not necessarily a verbatim stenographic report, is required by section 75-7015 and 75-5709, R.C.M. 1947, on an appeal to the state superintendent from a decision of a county school transportation committee.
2. The parties to a controversy before a county school transportation committee may not waive the making of a transcript in the absence of rules and regulations providing for appeal without a transcript promulgated by the state superintendent of public instruction.

Very truly yours,

ROBERT L. WOODAHL
Attorney General