

VOLUME NO. 43

OPINION NO. 29

DISASTER AND EMERGENCY SERVICES - State reimbursement to school districts for transportation services during school closure resulting from governor's declaration of emergency;

SCHOOL DISTRICTS - State reimbursement to school districts for transportation services during school closure resulting from governor's declaration of emergency;

MONTANA CODE ANNOTATED - Sections 10-3-104(2)(a), 20-9-806, 20-10-145, 20-10-145(1).

HELD: The state may not reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency.

August 11, 1989

Ted O. Lympus  
Flathead County Attorney  
P.O. Box 1516  
Kalispell MT 59903-1516

Dear Mr. Lympus:

You have requested my opinion on the following question:

Must the state reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency?

The controlling statute concerning state transportation reimbursement is section 20-10-145, MCA. That statute states, in pertinent part: "The state transportation reimbursement ... shall be computed on the basis of the number of days the transportation services were actually rendered." § 20-10-145(1), MCA. Because the governor may, pursuant to section 10-3-104(2)(a), MCA, suspend the regulatory provisions of any statute in dealing with an emergency, and because the governor in his executive order referenced section 20-9-806, MCA, it has been argued that transportation reimbursement should be made to school districts even though bus services were not actually rendered. I am constrained to disagree with that argument for the following reasons.

Section 10-3-104(2)(a), MCA, provides:

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulator, statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster. [Emphasis supplied.]

The governor's executive order, after declaring that a state of emergency existed, provided:

I further direct that such school closures resulting from this Executive Order shall be considered closed by reason of a declaration of emergency by the Governor as provided for in Section 20-9-806, MCA.

Section 20-9-806, MCA, states:

If a school is closed by reason of a declaration of emergency by the governor, the pupil-instruction days lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

Nothing in the governor's executive order indicates that in his declaration of emergency the governor intended to suspend the state's transportation

reimbursement formula. The language of the governor's order is specific, mentioning only one statute, § 20-9-806, MCA, which is very focused in purpose and does not mention reimbursement for transportation. Section 10-3-104(2)(a), MCA, describes the governor's discretionary authority during an emergency and provides that the governor may suspend the provisions of any regulatory statute. While the governor invoked the procedure of section 20-9-806, MCA, there is nothing in section 10-3-104(2)(a), MCA, or his executive order to suggest that the transportation reimbursement restrictions found in section 20-10-145(1), MCA, would be suspended.

THEREFORE, IT IS MY OPINION:

The state may not reimburse school districts for school bus transportation for February 2 and 3, 1989, when the districts closed in accordance with the governor's declaration of emergency.

Sincerely,

MARC RACICOT  
Attorney General