OPINION
43-93

October 7, 1943 (OPINION)

SCHOOL DISTRICTS

RE: Arbitration

Your letter of October fourth addressed to the Attorney General has been received and referred to the undersigned for attention and reply.

You ask for an opinion of this office on a situation which has developed in one of your school districts and the facts are briefly stated as follows:

> School number two in district 9 has three pupils residing in the district within three-fourths of a mile from school. One pupil from another district attended this school last term. At a regular meeting the school board decided to close the school and furnish school facilities for the three pupils, all of whom are members of the same family, at whatever school they might attend and to pay tuition if outside the district, and to furnish them transportation at the rate of five cents per mile for each mile actually traveled. There is another school in the same district three and three-fourths miles from the residence of the patron. The route to this school is over county roads, which the patron contends will be impassable in the winter or wet weather, due to lack of grading of the roads, accumulation of snow, etc. The distance from the patron's residence to the city of Rugby is seven and three-fourths miles. The patron is unable to secure from the rationing board sufficient allowance of gasoline to transport his children to either school.

The patron is not satisfied with the provisions made by the board for the attendance of his children at either one of the schools mentioned, and at his request the matter was submitted to arbitrators as provided by chapter 206 of the Session Laws of 1939. The board of arbitrators recommended that the school within three-fourths of a mile of the patron's residence be reopened. The board, however, refused to re-open the school, claiming that the matter of reopening is not subject to arbitration.

Chapter 206, supra, provides that any school may be discontinued when the average attendance of pupils therein for ten consecutive days shall be less than six **** if proper and convenient school facilities be provided for the pupils therein in some other school and such proper and convenient facilities must be provided for the pupils in the territory of such school until such time as the school may be reopened by the board. In determining what shall constitute proper and convenient school facilities, the school board shall consider the distance of such child from the nearest school and all surrounding circumstances and may furnish transportation to such other school or pay an extra allowance for transportation or

furnish the equivalent thereof in tuition or lodging at some other public school. The statute then provides that in case of dispute between the patron and the school board as to whether or not the school board shall furnish or arrange to furnish adequate facilities, the matter may be submitted by the patron to a board of arbitration consisting of the County Superintendent of Schools, one arbitrator named by the patron and one named by the board and the determination of such arbitrators after hearing, shall be binding upon the school board.

It should be observed that it appears that it is discretionary with the board to close a school when the attendance for ten consecutive days is less than six, if proper and convenient school facilities be provided for the pupils therein in some other school. The statute then defines what constitutes proper and convenient school facilities.

From the language of the statute quoted, two conditions must be present in order to authorize the board to close or discontinue a school:

1. Less than six pupils for ten consecutive days, and

2. Proper and convenient school facilities must be provided for the pupils therein in some other school as provided in the statute.

If the patron is dissatisfied, he may have the controversy submitted to arbitrators and the decision of the arbitrators is binding upon the board. In the case you have submitted the matter of difference between the board and the patron has been considered by the arbitrators and the controversy is whether or not proper and convenient school facilities have been provided by the board. The arbitrators evidently were of the opinion that such facilities had not been furnished and therefor, they recommended that the school be reopened.

Since the statute provides that such decision is binding upon the board, it is my opinion that it is the duty of the board to reopen the school which has been discontinued. The arbitrators, undoubtedly, took into consideration the fact that the patron was unable to obtain gasoline for transportation of his children to any of the other schools, the distances and other circumstances incident thereto, and they therefor came to the conclusion that the board should reopen the school which had just been discontinued.

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Attorney General