

SCHOOLS:  
TAXATION (SCHOOLS):  
EXCEPTIONAL CHILDREN:

Under subsection 3 of Section  
167.151, RSMo 1969 (providing  
that a nonresident taxpayer must  
receive credit on tuition charged

his child in an amount equal to the tax paid to the school district), school taxes paid in prior years or delinquent taxes paid in the current year may not be used as a credit against tuition charges for the current year. Furthermore, exceptional children, as defined by Section 178.260, RSMo 1969, whose parents are nonresident taxpayers of a district, are entitled to "appropriate instruction" in accordance with subsection 2 of Section 178.260, RSMo 1969.

OPINION NO. 12

March 20, 1972

Dr. Arthur L. Mallory  
Commissioner of Education  
State Department of Education  
Jefferson State Office Building  
Jefferson City, Missouri 65101



Dear Dr. Mallory:

This official opinion is issued in response to your request for a ruling on whether, under Section 167.151.3, RSMo 1969, a person who pays a school tax in a district other than the one in which he resides may send his children to a public school in the district in which the tax is paid and have credited against the tuition charged for the current year (1) school taxes paid in prior years or (2) delinquent taxes paid in the current year. Also, you inquire whether exceptional children, as defined by Section 178.260.1, RSMo 1969, whose parents are nonresident taxpayers of a school district, are entitled to be enrolled in special classes for such children.

In Missouri, a student may attend the public schools of the district in which he lives without the payment of any tuition fee. A school board may charge a tuition fee to pupils who are not residents of the district and, therefore, not entitled to free instruction. See Section 167.151.1, RSMo 1969, which reads as follows:

"Admission of nonresident and other tuition pupils -- orphans exempt from tuition -- school tax credited against tuition. --  
1. The school board of any district, in its discretion, may admit to the school pupils not entitled to free instruction and prescribe the tuition fee to be paid by them, except as provided in sections 167.121 and 167.131."

Under certain circumstances, a person may send his children to school in a district other than the district in which he

Dr. Arthur L. Mallory

resides and receive credit on the tuition equal to the amount of school tax paid to the receiving district. Section 167.151.3 provides as follows:

"3. Any person who pays a school tax in any other district than that in which he resides may send his children to any public school in the district in which the tax is paid and receive as a credit on the amount charged for tuition the amount of the school tax paid to the district."

In Opinion No. 235, dated December 12, 1967, to the Honorable Melvin D. Benitz, this office concluded that a parent, under subsection 3, may send his children to any public school in the district in which property tax is paid and the school board of that district does not have the discretion to refuse admittance to those children. In reaching this conclusion, we noted that the most likely purpose underlying this legislation was to permit a person paying school taxes to directly benefit from his tax money. We find no intent expressed or implied in subsection 3 or in any other Missouri statute which would permit a taxpayer to receive credit on the current year's tuition for taxes paid in previous years or for delinquent taxes paid in the current year but attributable to previous years. Certainly, a resident taxpayer receives no direct benefit from school taxes paid in years in which that taxpayer had no children attending the public schools of his district. We find no language in subsection 3 which would lead us to believe that the legislature intended a nonresident taxpayer to have greater rights in this regard.

Therefore, we conclude that under subsection 3 of Section 167.151, RSMo 1969, a nonresident taxpayer may receive credit on the current year's tuition in an amount equal to current school taxes. For example, a nonresident taxpayer who pays real estate taxes in calendar year 1972, should be allowed a credit against any tuition charged him for the school year 1972-1973, in the amount of current school taxes paid.

With reference to your question concerning exceptional children, we understand that the question is whether parents who are nonresident taxpayers of a school district are entitled to have their exceptional child enrolled in special classes.

The term "exceptional child," as used in the statute, "includes children who deviate from the average in physical, mental, emotional or social developmental characteristics to such an extent that they require special educational services in order

Dr. Arthur L. Mallory

to develop to their maximum capacity." Section 178.260.1, RSMo 1969. (The definition does not include "gifted" children. Section 178.270.5, RSMo 1969.) The State Board of Education establishes "standards and regulations for determining those children who are eligible for special education under the provisions of Section 178.260. . . ." Section 178.270.3, RSMo 1969.

Every school district in the State is required to provide appropriate instruction for exceptional children.

"2. The board of education of each school district, except school districts in any county of the first class in which a special school district has been organized under sections 178.640 to 178.760, shall provide appropriate instruction for exceptional children between the ages of six and twenty years residing in the district who are educable and capable of benefiting by special education. Each six-director, urban and metropolitan school district in any county of the first class in which such special school district has been organized shall provide all appropriate instruction in remedial reading for its enrolled children, if such instruction is approved by the state board of education. The special school district in such county shall provide all appropriate instruction approved by the state board of education for all other categories of exceptional children hereunder." Section 178.260.2, RSMo 1969.

Therefore, it is the duty of the school district in which the exceptional child resides to provide appropriate instruction. If the school district in which the child resides does not have its own program for exceptional children, the Missouri Legislature has authorized it to contract with another school district for such instruction.

"Exceptional child defined -- board to provide instructions, exceptions -- transportation to be provided. -- 1. The term 'exceptional child' as used herein includes children who deviate from the average in physical, mental, emotional or social developmental characteristics to such an extent that they require special educational services in order to develop to their maximum capacity. Local districts may establish

Dr. Arthur L. Mallory

special programs by contracting with nearby districts for the education of one or more such children; or when any child cannot attend classes economically, safely or conveniently by providing adequate home instruction. Regulations for home instruction shall be established by the state board of education." Section 178.260.1, RSMo 1969.

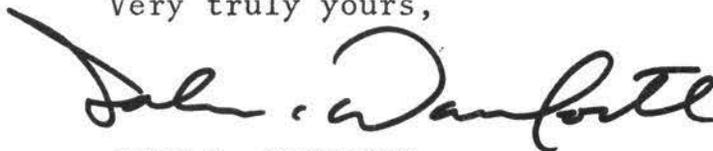
We have previously determined that under Section 167.151.3, a school district must provide education for the child of a nonresident taxpayer. Where the nonresident taxpayer has an exceptional child, we believe that the school district which receives the school taxes must provide "appropriate instruction" for the exceptional child. We discern no legislative intent to prevent a nonresident taxpayer who has an exceptional child from benefiting from his school taxes. Any interpretation of Sections 167.151.3 and 178.260, which would treat exceptional children differently from nonexceptional children, could lead to serious constitutional problems.

#### CONCLUSION

Therefore, it is the conclusion of this office that under subsection 3 of Section 167.151, RSMo 1969 (providing that a nonresident taxpayer must receive credit on tuition charged his child in an amount equal to the tax paid to the school district), school taxes paid in prior years or delinquent taxes paid in the current year may not be used as a credit against tuition charges for the current year. Furthermore, exceptional children, as defined by Section 178.260, RSMo 1969, whose parents are nonresident taxpayers of a district, are entitled to "appropriate instruction" in accordance with subsection 2 of Section 178.260, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH  
Attorney General

Enclosure:

Opinion No. 235, Benitz, 12-12-67