

SCHOOLS:

The district may not charge pupils "incidental" fees.

*Handwritten notes:*  
HB 10/10/33  
12-1

November 28, 1933.

FILED  
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Hon. Elliott W. Dampf  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri

Dear Mr. Dampf:

This is to acknowledge your letter which reads as follows:

"Will you kindly give me your opinion as to whether children attending high school in Jefferson City, from the 45th school district of Missouri, are required to pay a fee of \$3.00 per month, which is supposed to be an incidental fee, in addition to the tuition of \$50.00, which is a statutory requirement."

The purpose of the \$3.00 per month charged as "incidental" fee to the student is explained in a form letter written by the Superintendent of Jefferson City's Public Schools, dated August 11th, 1933, addressed to non-resident high school students. We quote part of same:

"As you probably know, the State has failed miserably in its agreement to pay high school tuition. We cannot expect to receive more than 25% of the amount due us on account of the attendance of non-resident pupils for the past year and for the next year. While it is true that the last session of the General Assembly passed a deficiency appropriation bill which will pay in full the tuition for 1931-32, we cannot hope to secure a deficiency bill at the next session of the Legislature to pay two years' delinquency in the state guarantee. High School districts over the state, pretty generally, are compelled to get revenue in some other manner."

The Jefferson City Board of Education at its last meeting fixed a fee of \$3.00 per month for each student of high school rank not resident of the district. This is an incidental fee which will be used to furnish facilities of education for these non-resident students.

Boards of Education in each district will be expected to pay \$25.00 for the year, or \$6.25 quarterly, for each non-resident attending the Jefferson City High School from their respective districts. In cases where the Board is unable to pay this fee of \$25.00, it will be charged to the student. It behooves non-resident students to receive the assurance of the Board that they will be able to pay this fee before enrolling for regular work."

It is readily ascertained, from above letter, that the \$3.00 per month charged to non-resident students and termed "incidental" fee is nothing more than to take the place of that part of the \$50.00 not received from the State. No matter by what name it is called, it is "tuition."

On September 30th, 1933, this Department rendered an opinion Re: "Schools: Tuition required and allowed for non-resident high school pupils", which answers your inquiry and we are attaching hereto a copy of same. We call attention to this found on page 2:

"Before the enactment of Section 16 just quoted any high school receiving state aid was required to admit non-resident pupils, but the method of determining the tuition fee to be charged was only covered by the word 'reasonable'. However, in Section 16 a precise method of computing tuition to be charged as well as a requirement as to how and by whom it should be paid was provided, i. e., that the school district where the pupil resides must pay such pupil's tuition, with the amount of such tuition specifically provided for by the following provision:

'But the rate of tuition paid shall not exceed the per pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term.'

A school district cannot require a pupil resident therein to pay anything as tuition. 'Section 1 of Article 11 of our Constitution made it the duty of the General Assembly to establish and maintain free public schools for the gratuitous instruction of all persons in the state, between the ages of six and twenty years. Pursuant to the mandate free public schools have been established throughout the state, and District No. 107 is one of the free public schools established for gratuitous instruction. The right of children, of and within the prescribed school age, to attend the public school established in their district for them is not a privilege dependent upon the discretion of anyone, but is a fundamental right, which cannot be denied, except for the general welfare.' State ex rel Roberts v. Wilson, 221 Mo. App. 9, 297 S. W. 419, 420 (1927).

The Legislature by Section 16 of the 1931 Act (Amended-Laws of Mo. 1933, page 393) above quoted has made it compulsory upon school districts to receive non-resident pupils for high schools under certain fixed conditions, and to receive them without calling upon such pupils to pay any tuition, as before that Act it was compulsory to accept resident pupils without charging them any tuition, so it is believed that the above quotation from State ex rel Roberts v. Wilson would be as applicable to non-resident high school pupils under the 1931 Act as before 1931 it was applicable to resident pupils. It is therefore clear that under the present law the district in which a non-resident pupil attends high school cannot require such non-resident pupil himself to pay any tuition."

And further, page 3:

"It is our opinion that any high school in this state receiving state aid must admit non-resident pupils whose tuition must be paid by the districts where such pupils reside, and that the tuition so paid must be the per-pupil cost of maintaining the school attended less a \$50.00 deduction for each pupil."

It is our opinion that the non-resident high school pupils attending high school in Jefferson City are not required to pay \$3.00, or any other amount, per month as an "incidental" (or by whatever name called) fee in addition to the tuition the district pays, such arrived at in conformity to the statute.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General

JLH:EG