

SCHOOLS-

SCHOOL DISTRICTS:-is making a permanent or temporary home with her grandmother, is entitled to be educated in the district in which she lives, without the payment of tuition.

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March 3, 1934.

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Mr. Bernard Altman,
Clerk School District No. 51,
Rock Port, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"We have a case in our District coming under Section 11135. We have a pupil who was staying with her grandmother, whose parents are living in Texas and separated and do not contribute to the support of the child. She attended Rock Port High School last year and the Board of Education insist that our District is indebted to them for her tuition. We hold she is not. Her grandmother owns a farm in the district and pays taxes. In the foot notes of the above section, State ex rel. Halbert v. Clymer, 164 N. A. 671, would apply.

Will you kindly decide this for us, at your convenience?"

You refer us to Section 11135, which is now section 9207, R. S. Mo. 1929, and reads as follows:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district--said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to

be paid by the same: Provided, that the following children, if they be unable to pay tuition, shall have the privilege of attending school in any district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support: Provided, further, that any person paying a school tax in any other district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax."

Section 1 of Article XI of the Constitution of Missouri provides as follows:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years."

Pursuant to that constitutional mandate the courts have adopted a policy of construing statutes relating to schools very liberally. The Court in *State ex rel. v. Olyner*, 184 Mo. App. 671, 676, says:

"The policy of this state is to educate, and to furnish free of charge, good schools for all children of school age, and even to compel the attendance of children thereto.***It is therefore the duty of the courts to liberally construe our statutes relating to schools, and in such a manner as to open, and not to close, the doors of the schools against the children of the State."

You state in your inquiry that there is a pupil staying with her grandmother, whose parents are living in Texas and are separated and do not contribute to the support of the child. Under Section 9307 Above, if a child is unable to pay tuition he shall have the privilege of attending school in any district in the state where he or she may have a permanent or temporary home, where the child's parents do not contribute to her support. It is evident from your

letter that the parents of this child do not contribute to her support. The question then remains as to whether or not the child has a permanent or temporary home within the district wherein she is attending school. While upon the facts set out in your letter we may not be able to say that the child has a permanent home within the district, yet, undoubtedly the situation is such as to warrant our holding that the child does have a temporary home within the district. The child's parents do not contribute to her support and she, by reason thereof, is compelled and does make her home with her grandmother. Since the parents do not contribute to the support of the child, that support must come from someone, and in this event apparently it comes from the grandmother, who must provide shelter, food and clothing for the child. We believe it is apparent that this child is not within the district for the purpose of attending school, but is there because her parents do not support her. For that reason it is absolutely necessary that she make her home with her grandmother. Under the statutes it makes no difference whether her home with her grandmother be a permanent or temporary home. In either event, if her parents do not contribute to her support she is entitled to attend school without paying tuition.

In State ex rel. v. Clymer, 104 Mo. App. 671, 678, it is said:

"The statute is not ambiguous, and plainly provides that children who are unable to pay tuition, and whose parents are not contributing to their support, shall have the privilege of attending school in any district in which they may have a permanent or temporary home. It will be noticed that the privilege is granted, regardless of the residence or domicile of the parent.

It seems to us that the evidence clearly brings the case within the fourth subdivision of the statute. The boy, to all intents and purposes, was a resident of the school district, although his domicile may have been at Springfield. He was living in the district as a member of the relator's family, and under an agreement made with his father by which the relator had agreed to take, care for, and educate him. It was not a contract made for the sole purpose of permitting him to attend the Steelville school. The grandparent was aged, and the boy had lived with him

a part of the time for more than five years, and undoubtedly there existed between them a degree of affection perhaps equally as strong as that between father and son. The common experience of mankind proves the truth of this statement, and therefore, it needed the testimony of no witness to establish it. But the grandfather did testify that he liked the boy and wanted him to live with him, and it was satisfactory with the father and the son also. There is no claim that the contract was not made in good faith, or that it was not being strictly performed by all parties thereto. The fact that it was not in writing was a matter that the parties alone were concerned about, and no stranger could set it aside or take advantage of the failure to observe formality in its execution."

In view of the foregoing observations, we conclude that this child is entitled to be educated without anyone paying her tuition; her parents do not contribute to her support and she is making either a permanent or temporary home with her grandmother. The statute is fully complied with. Although it does not appear there is any contract between the parents and the grandmother regarding the support of this child, as there was in the Clymer case, yet the only inference to be drawn from the facts stated in your letter is that the child has a home with her grandparent and this grandparent is supporting her without any assistance from her parents. In view of our constitutional mandate that all children between the ages of six and twenty should be furnished, free education, and in view of our decisions constraining our school statutes favorable to carrying out the mandate of the Constitution, we conclude that no one is responsible for her tuition.

It is therefore the opinion of this Department, upon the facts stated in your inquiry, that the child in question, whose parents do not support her and who has a temporary or permanent home in the district, is entitled to be educated without the payment of tuition.

Very truly yours,

APPROVED:

FRANK W. BATES,
Assistant Attorney General.

Attorney General.