

SCHOOLS: Right of non-resident pupils to attend in district where parent pays taxes.

November 9, 1934.

11-20



Honorable John M. Bragg
Prosecuting Attorney
Douglas County
Ava, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"I want your opinion on Section 9207
Revised Statutes of Missouri, 1929.

"Mr. Riley owns land in an adjoining School District and pays taxes on the same. The School District or the Board have refused to allow Mr. Riley's children to attend the school in the adjoining district. One of our local attorneys has advised the school board that it can refuse attendance on non-resident children, when the parents own land in the district and pay taxes on the same.

"Please give me your opinion on this Statute."

The answer to your inquiry is found in Section 9207, R. S. Mo. 1929, which provides 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shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner.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 expell a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and my 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." (Underlining ours).

You state that a local attorney advised the school district that it can refuse attendance to non-resident children of parents owning land in the district and paying taxes on the same. Evidently the local attorney is confusing the case of State ex rel. Mildred Burnett v. School District of the City of Jefferson (not yet reported) when he arrived at such a conclusion. It is true that in the Burnett case, supra, the Supreme Court of Missouri recently held that a high school receiving state aid would not have to admit non-resident pupils; neither could such be compelled to admit same by mandamus. However, in that case the question of a person owning property in Jefferson City and paying taxes thereon was not involved. The only matter before the court being that a non-resident pupil, properly qualified as to age, desired to attend high school in Jefferson City without paying tuition. It was not shown in that case that Mildren Burnett was an orphan or that her parents

owned property in the Jefferson City District and paid taxes thereon. Thus, the Burnett case is not authority for a school to refuse admittance unless the facts are analogous.

In Section 9207, supra, the broad general proposition is, "and may admit pupils not residents within the district", but such broad principle has certain exceptions, namely, "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 have a permanent or temporary home etc. * * 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* *." Therefore, it would follow that while Section 9207 is discretionary in part, yet it is mandatory upon the district if one pays tax in that district, even though he is a non-resident, as the Statute says "shall be entitled" to send his or her children to that district. In other words, Section 9207, supra, gives the board some discretion as to admission of non-resident pupils and makes it mandatory in other particulars such as the one here under consideration.

Article XI, Section 1, Missouri Constitution provides:

"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."

The school laws are remedial and should be given liberal interpretation. State ex rel. Halbert v. Clymer, 164 Mo. App. 671.

It is our opinion that the school district or board does not have a right to refuse admittance to Mr. Riley's children because he resides in another district as he pays tax in the district in which he desires to send his children to school.

Respectfully submitted

APPROVED:

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