

- SCHOOLS: (1) Does a high school have to return fees exacted from pupil?
(2) What action may be brought to compel sending district to pay tuition of non-resident students if such refuses to do so?

September 14, 1934.



Hon. Chas. A. Lee
State Superintendent
Department of Public Schools
Jefferson City, Missouri

Attention: Mr. Geo. B. John

Dear Mr. John:

This is to acknowledge your letter as follows:

"Many inquiries have reached this office concerning the validity of the additional fee high school districts collected from non-resident pupils last year.

1. Were high school districts acting within the law in accepting such fees last year? Would the decision in the case of School District Barnard v. Matherly 90 Mo. App. 403, apply in this case?

Several high school districts have made complaint that some rural school boards have refused to pay the district's part of the high school tuition cost.

2. What would be the proper action to pursue in requiring sending school districts to comply with the law for the payment of the high school tuition when the school boards in these districts neglect or refuse to meet this obligation?

I shall appreciate your opinions relative to the foregoing questions."

We shall answer your questions in the order asked.

I.

Were high school districts acting within the law in accepting such fees last year?

In answer to the above question, it has been the opinion of this Department from the first time we wrote on the subject of charging non-resident high school students tuition fees, and it is still the opinion of this Department, and confirmed by the Supreme Court in the recent case of State ex rel. Mildred Burnett vs. School District of Jefferson City (not yet reported), that the high school cannot charge such pupils a tuition fee. See our opinion rendered to Mr. G. C. Jones on August 28th, 1934, and former opinions. Our answer, then, to the right of the high school district to charge non-resident pupils tuition fees, will be in the negative. However, your inquiry relates to the right of the high school, after having exacted or accepted fees or promises to pay fees from pupils to attend the high school, to now keep said fees, or does the pupil have the right to recover fees paid by them to the high school from such school? The answer to these questions depends upon the facts in each individual case.

At the outset, we say that, if the state or sending district refunds to or pays the high school these fees in part or all that the student or parent has paid, then the high school should refund the amount so remunerated by the state or sending district. So our discussion of the above question will be predicated on the assumption that the deficit paid by the pupil will never be paid by the state or sending district. As recently ruled by the Supreme Court in the Burnett case, supra, the high school does not have to accept non-resident pupils, and if such pupils paid tuition fees to the high school district, then the question arises - What consideration supports the payment or promise to pay? Or, was such payment a compromise of a doubtful claim?

In School District of Barnard v. Matherly, 90 Mo. App. 403, l. c. 407, the Kansas City Court of Appeals said:

"It is very well settled in this state that the compromise of a doubtful claim, asserted in good faith, furnishes a valuable consideration to support a promise."

Prior to the Supreme Court's ruling in the Burnett case, supra, quite a difference of opinion prevailed as to the right of the high school to charge non-resident pupils tuition fees. And if the high school and the pupil were of opposite opinion and compromised such doubt by permitting the pupil to attend high school, and in return exacted from the pupil a tuition fee, then, we hold, and it is our opinion, that the pupil cannot recover the fees thus paid; and the high school having received them was within the law.

Referring to the compromising of a doubtful claim, it is well to keep in mind the language of the Kansas City Court of Appeals in the case of McCrary v. Thompson, 123 Mo. App. 596, l. c. 601, as follows:

"It is held that the assertion of a doubtful claim in good faith is a sufficient consideration for a promise. (Cases cited.) But plaintiff's claim was not doubtful. It had no foundation whatever. There was no consideration for the promise."

With the premises here under consideration, and in the light of the Burnett case, supra, there is no doubt but that the high school did not have to accept non-resident pupils and the pupils are presumed to have known that fact; and the high schools are likewise presumed to have known that they could not charge the pupils to attend the high school. However, the consideration that would support the retention of these fees by the high school against demand by the pupils, would be that the high school

permitted the pupil to attend, which the high school did not have to allow, and the pupils paid a fee, which the pupils did not have to pay, but paid same in consideration of the high school allowing the pupil to attend school. Thus, in our opinion, the consideration would be sufficient and the high school would be within its rights in retaining these fees.

See also, School District v. Matherly, 84 Mo. App. 140; Hanson v. Yearly, 159 Mo. App. 151; Stierman v. Weissner, 253 S. W. 383.

II.

What would be the proper action to pursue in requiring sending school districts to comply with the law for the payment of the high school tuition when the school boards in these districts neglect or refuse to meet this obligation?

Section 16, Laws of Missouri, 1931, page 343, amended Laws of 1933, page 393, provides in part as follows:

"The board of directors of each and every school district in the state * * * * * shall pay the tuition of each and every pupil * * * * *." (that attends a high school in an adjoining district.)

The above section is mandatory upon the board of directors and if such do not pay the tuition of a pupil resident in their district who attends a high school located in an adjoining district, then, in our opinion, a debtor and creditor relationship exists between the sending district and the receiving high school, and such receiving high school could maintain an action at law for debt against the sending school district.

Hon. Chas. A. Lee
(Mr. Geo. B. John)

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September 14, 1934.

Hereinbefore we have called attention to the fact that the receiving high school does not have to admit non-resident pupils, and if such high school refused to admit the pupils because the sending district will not pay the tuition of such resident students, then, in our opinion, the pupil would have a right to bring a mandamus action to compel its district to comply with Section 16, supra.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

(Acting)
Attorney-General.

JLH:EG