

SCHOOLS: Parent residing on district school line to send children to school in district he deems himself a resident of.

5-7
May 4, 1935.

Hon. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri



Dear Sir:

This will acknowledge your request for an opinion as follows:

"I have been requested to obtain a ruling from your office involving a school situation. The facts are that Tilden School operates under the consolidation statutes and this school comprises land both in Ralls and Marion County. A gentleman whose name I can not now remember lives right on the school district line, that is the district line runs through the middle of his house. This gentleman has six children and in the past they have been attending Tilden School. To-day he was informed by the Superintendent of Tilden School that the Directors had instructed him to order the children not to come to Tilden School. The question involved is, in what school district are these children located for the purpose of attending school without the payment of tuition. For your information, I might add that some of the children sleep in the Tilden District and others sleep in the other district.

"I realize this question is quite novel and I trust you will pardon my seeming presumption in asking your opinion, but I am advised that the directors of Tilden School will not change their opinion without a ruling from your office. Thanking you, I am "

We direct you to authorities which, in our opinion, govern the matter in question.

In the case of Johnson v. Smith, 43 Mo. loc. cit. 301, the Court said:

**** a man's domicile is where he has fixed his ordinary dwelling, without a present intention of removal, ****."

In discussing one's mental attitude, the Court in State ex rel. Ramey v. Dayton, 77 Mo. loc. cit. 683 said:

**** The physical act of staying must be accompanied with the mental determination of making a home or domicile in the place where the party stays or abides. ****"

In the case of In re Lankford Estate, 272 Mo. loc. cit. page 9, the Court stated:

"Residence is largely a matter of intention. (Lankford v. Gebhart, 130 Mo. 621.) This intention is to be deduced from the acts and utterances of the person whose residence is in issue. ****."

In Trigg v. Trigg, 41 S. W. (2d) loc. cit. 589, the Court said:

**** We hold in accord with the general expression of the law that residence is largely a matter of intention evidenced by some act or acts in conformity with such intention. ****"

We now turn to the domicile of minors.

In the cases of Lacy v. Williams, 27 Mo. 280, Marheineke v. Grothaus, 72 Mo. 204; Lewis v. Castello, 17 Mo. App. 593; De Jarnett v. Harper, 45 Mo. App. 415; and Smith v. Young, 117 S. W. 628, the courts heretofore mentioned in effect have held that the domicile of the parents is

primarily the domicile of the minor children.

In light of the foregoing, it is the opinion of this department that residence and domicile, as we determine from the above, will govern in the instant matter. If a person's house is situated on a district school line, which line would place such person's house partly in one district and partly in another, we conclude that the parent, who has by his acts evidenced his intention of residence in a particular school district by sending his children to school in such school district, is a resident thereof; as well as his minor children, and such minor children shall attend school in the school district where the parent so deems himself to be a resident.

We further conclude that since such intent of residence has been demonstrated in the instant school district by the parent, that such minor children shall attend school therein without the payment of tuition.

Very truly yours,

J. E. TAYLOR
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

RCS/JET:afj