

SCHOOLS: School of residence must pay excess over \$50 of per pupil cost of its students attending high schools in other districts.

September 23, 1936. 9-24



Honorable L. I. Morris
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Mr. Morris:

This is to acknowledge your letter as follows:

"The members of the board of Woodland School District #72, Bates City, Missouri, have made a formal application to this office for an opinion from you concerning the school laws of the state of Missouri. It is therefore respectfully requested that your office supply me with an opinion on the following set of facts.

"Woodland School District #72, Lafayette County, Missouri, sent one Esther Minter to the Bates City, Missouri, Consolidated District, Lafayette County, Missouri, from September 2, 1929, to May 1933. On September 4, 1933, and continuing to May, 1934, one Juanita Morris was sent from the Woodland District #72 to the Bates City Consolidated District, and on February 26, 1936, to May, 1936, Edith and John Baslee were sent from Woodland District #72 to Bates City Consolidated District.

"Bates City consolidated District rendered a statement at the end of the school

term, ending in 1932, for the sum of \$50.96 for pupil Esther Minter; and for the term ending in 1933 the sum of \$53.12 in the case of the Morris child; in 1934 Woodland was billed by Bates City for the sum of \$11.10--being $\frac{2}{3}$ of a year for the Morris child. The Boslee children at the end of 1936 were charged with having attended $\frac{1}{5}$ of a year in 1936 and billed at \$5.90 each. The figures upon which they base their contention are appended for your information.

"The question resulting in a refusal of Woodland District to pay Bates City is as to the legality of Section 16A of the 1935 School Laws, which require schools to pay tuition to districts affording high school facilities. Some confusion has arisen in the mind of the Woodland district over the decision rendered in State ex rel Burnett vs School District of City of Jefferson, SW (2nd) 74, page 30. It is the contention of the Woodland people that they owe nothing to Bates City, and what Woodland School Board wishes is your opinion as to the constitutionality and legality of the statutes requiring them to pay this charge."

Section 16, Laws of Missouri, 1935, is the statute which relates to the payment of tuition by resident boards of directors on those pupils attending high schools in another district. Section 16 was first enacted in 1931, Laws of Missouri, 1931, page 343, and was amended in 1933, Laws of Missouri, 1933, page 393, and amended in 1935, Laws of Missouri, 1935, page 351.

Section 16, as now appearing in the 1935 Laws, reads as follows:

"The board of directors of each and every school district in this state that does

not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered; 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, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota; if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year; but the attendance of such pupils shall not be counted in determining the teaching units of the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental purposes. In case of any disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state superintendent of schools, and his decision in the matter shall be final. Subject to the limitations in this section, each pupil shall be free to attend the school of his or her choice; but no school shall be required to admit any pupil, nor shall any school be denied the right to collect tuition from a pupil, parent, or guardian, if the same is not

paid in full as herein before provided. In no case, however, shall the amount collected from a pupil, parent, or guardian exceed the difference between fifty dollars and the per-pupil amount actually paid by the state, nor shall the amount the district of the pupil's residence is required to pay exceed the amount by which the per-pupil cost of maintaining the school attended is greater than fifty dollars. If, for any year, the amount collected from a pupil, parent or guardian exceeds the difference between fifty dollars and the per-pupil amount actually paid by the state, the excess shall be refunded as soon as the fact of an overcharge is ascertained."

You will note that said section specifically provides that "The board of directors of each and every high school district in this state that does not maintain an approved high school * * * * shall pay the tuition of each and every pupil resident therein who * * * * attends an approved high school in another district * * *."

While said section specifically provides for the board of directors to pay the tuition, yet, the amount of tuition the district shall pay is based upon the per-pupil cost of maintaining the school in which the pupils attend "less a deduction at the rate of fifty dollars for the entire term." In other words, the board of directors pays the tuition which is calculated and based upon the per-pupil cost, less \$50. To illustrate: If the per-pupil cost of a school district which the pupil attends, amounts to \$75 for the entire term, the district of residence would have to pay \$25 of said \$75.

The case of State ex rel. Burnett v. School District of City of Jefferson, 74 S. W. (2d) 30, specifically pointed out that Section 16 was complete and exclusive as to the payment of tuition. We quote (l. c. 33-34):

"Now, although section 16 contains no express provision that a nonresident

pupil shall not be required to pay tuition, it does provide a complete and apparently exclusive scheme for its payment. First, it unequivocally requires the district of residence to (italics ours) 'pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county where work of one or more higher grades is offered.' Second, it expressly limits the amount of tuition by providing that (italics ours) '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, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year; * * * and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental expenses. * * * * *'

A complete scheme for the payment of the tuition of nonresident pupils thus having been provided, we cannot escape the conclusion that it was intended to be exclusive and that respondents are without power to charge tuition in any other way. With respect to payment of tuition of nonresident pupils, the provisions of old section 9207 and section 16 of the new law are inconsistent, and the later enactment must prevail."

In the Burnett case the Supreme Court, en banc, called attention to the fact that the \$50 to be paid by the State was in reality an aid to the sending district and not

the receiving district; having the following to say (p. 34):

"It is now conceded by all parties hereto that the provision in Section 16 for payment by the State of \$50 tuition per nonresident attending pupil is in reality state aid to the sending district and not to the receiving district."

Bearing in mind that the district of residence must pay the tuition of its pupils attending high schools in other districts, and that the rate of tuition is based upon the per-pupil cost of the school attended, less a deduction at the rate of \$50, and that the \$50 the State pays is an aid to said resident (sending) district, it is our opinion that the Woodland School Board would have to pay to Bates City Consolidated School District, tuition of each of its pupils so attending Bates City Consolidated School District, but the amount to be paid would only be that over and above \$50. The specific amounts that would be owing would be a question of fact to be ascertained, namely, by calculating the per-pupil cost, and then deducting \$50. The excess over the \$50 would be the amount due and owing.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

JLH:EG