

SCHOOLS: Children of employees of the Confederate Soldiers' Home are entitled to be sent by the local rural school district to a high school district, and local district must pay any deficit in tuition.

November 7, 1939

Honorable A. T. Broughton,
President, Board of Trustees
Confederate Soldiers' Home,
State Auditor's Office,
Jefferson City, Missouri.

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Dear Sir:

This Department is in receipt of your letter of November 3d, wherein you make the following request:

"In behalf of the Board of Trustees of the Confederate Soldiers' home of Missouri, near Higginsville, I submit the following statement of facts, with the request that you furnish me a written opinion in accordance therewith:

"The Confederate Soldiers' Home of Missouri is located in Long Grove School District No. 28, of Lafayette County, Missouri. The Long Grove School District No. 28 does not maintain a high school. Certain children of employees of the Confederate Soldiers' Home of Missouri have completed the work in the highest grade offered by said Long Grove School District No. 28, and are eligible to attend high school in a district having an approved high school, where one or more higher grades is offered.

"The Long Grove School District No. 28 adjoins the Higginsville School District which does maintain a high school. The per-pupil cost in maintaining the Higginsville High School for a school year is

\$80.00, \$50.00 of which said amount is paid by the State of Missouri as provided by law, the balance, or \$30.00, of such per-pupil cost is to be paid by the district of which said pupils are residents.

"There are at present three pupils attending the Higginsville High School who, together with their parents, are and have been residents of the Long Grove School District No. 28 from four to six years. The Board of Directors of the Long Grove School District No. 28 refuse to pay the additional amount, over and above State aid, or \$30.00 per-pupil for each school year, contending that they are not liable for such additional per-pupil cost by reason of the fact that the parents do not vote or pay taxes in said Long Grove School District No. 28.

"All the children of school age residing at the Confederate Soldiers' Home have been enumerated by the Long Grove School District No. 28 for State aid for many years. It is our contention that the parents and pupils above mentioned are residents of the Long Grove School District No. 28 regardless of the fact that the parents do not vote or pay tax in said district, and that said district is liable under the law for the payment of any amount, over and above State aid, to the Higginsville School District where such children are now attending high school."

The pertinent part of Section 16, Laws of Missouri, 1935, page 351, is 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; * * * * *

Noting that the statute uses the expression, "every pupil resident therein," we shall consider your question from the standpoint as to what is meant by "resident therein."

In the decision of Clarence Special School District v. School District No. 67, 341 Mo. 178, on reversing a decision of the lower court, stated in effect that the sending district was obligated to pay any deficit in the tuition over and above \$50.00 that Section 16a gives in the form of aid, providing that it did not cause the sending district to become indebted beyond the limits as contained in Section 12, Article X, of the Constitution of Missouri. In the decision of State ex rel. Burnett v. School District, 335 Mo. 803, the decision is to the effect that the district which sends the children to the high school is entitled to the state aid itself and not the receiving district.

The question as to whether or not the children of the employees of the Confederate Soldiers' Home are bona fide residents of the Long Grove School District No. 28 of Lafayette County, Missouri, is largely a question of fact. We herewith offer decisions of our courts which have had this question before them:

In the decision of School District v. Matherly, 84 Mo. App. 140, l. c. 142, the court said:

"In our opinion, to entitle one to school privileges for his children in the public schools he must bona fide reside within the school district. Coming temporarily within the district to reside during the scholastic year, for the purpose of

sending children to the school of that district can not be allowed. If this defendant has such right, then all other citizens of Nodaway county, outside of Barnard, have, of course, the same right. The result would, therefore, be that that district could be called upon to support schools for the benefit of other distinct communities. This was not contemplated by the statute. *State v. School Dist.*, 55 Neb. 317; *Gardner v. Board of Education*, 5 Dak. 259.

"If one living outside a school district desires the free school privileges of another district, he must abandon his old residence and go into the other district with the intention to become a resident therein and to subject himself to all the burdens and duties of other citizens residing there. 'A temporary removal of a person for the sole purpose of educating his children, without an intention of abandoning his usual residence, and with the intention of returning thereto when his purpose has been accomplished, will not constitute such a change of residence as would, under the law, entitle him to vote at his temporary abode.' *Hall v. Schoenecke*, 128 Mo. 661. Nor would such removal entitle him to free tuition for his children.

"Defendant has cited us to the case of *State ex rel. v. Smith*, 64 Mo. App. 313. It is not applicable. The question there was as to the performance of the duty of the school clerk in taking the enumeration of school children to the end that it might be determined whether there was a sufficient number of negro children to authorize a school for them. The complainant in that case wanted a negro school maintained for the year 1894. By counting his children there was a sufficient number, by omitting them there was not. He had

moved his family outside the district and to all appearances had abandoned his residence. He claimed he had an intention of returning, but of this the clerk was uninformed and he rightly omitted their names from the enumeration list. On the general subject of residence, on the point made that defendant was yet a citizen of the district in which his farm was, see *State ex rel. v. Banta*, 71 Mo. App. 32."

And again in the decision of *Northern v. McCaw*, 189 Mo. App. 362, l. c. 368, various cases are discussed which bear on the question as follows:

"In the case of *Chariton County v. Moberly*, 59 Mo. 238 l. c. 242, 243, we find the law declared as follows: 'If a married man has two places of residence at different times of the year, that will be deemed his domicile which he himself selects or describes or deems to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the right and duties of a citizen.'

"The fact that the family lived for several months in the summer on the farm would make the city of Rolla none the less plaintiff's domicile or place of residence. (*Hall v. Schoenecke*, 128 Mo. 661, 31 S. W. 97.)

"The only residence this record discloses that this plaintiff had prior to moving to Rolla was Springfield, Missouri, and he certainly offered sufficient evidence that he abandoned the Springfield home. And the fact that the wife and children stayed on her farm from July until September--when plaintiff established his home in Rolla--is not convincing that he established his family home on a farm--a place he did not own.

The use and occupancy of the Rolla habitation clearly, under subdivision seventeen of section 8057, Revised Statutes 1909, fixed that as his permanent abode. The fact that the personal property on the farm was assessed in the Hirshe School District falls short of fixing plaintiff's domicile in that district. (State ex rel. Brown v. Hamilton, 202 Mo. 1. c. 386, 100 S. W. 609.) It is established, we think, that he abandoned his Springfield home and began to be a bona-fide resident of Rolla in September, 1913, bringing himself within the rule declared in the case of Barnard School District v. Matherly, 84 Mo. App. 140 (which, it may be observed, has been before the appellate courts of this State three different times: 90 Mo. App. 403; 103 Mo. App. 337, 76 S. W. 1109). The evidence in that case as to residence was far less convincing than is the evidence here, and it was finally decided in defendant's favor, the defendant in that case occupying the same position as plaintiff in our case.

There are other decisions which might throw light on the question but we believe that the quotations from the above are sufficient to decide the question.

It is our opinion that even though the parents of the children in question do not pay taxes or vote in Long Grove School District, yet the same would not prevent them from the privilege of sending their children to the Higginsville School District in order that they may attend high school. You state in your letter that the employees have lived at the Confederate Soldiers' Home five or six years. The test appears to be as to whether or not parents of the children in question are temporarily residing in the district for the purpose of educating their children without becoming bona fide residents and with the intention of returning to their original districts or homes after the children have received their education.

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Having lived in the district for five or more years, and evidently with no intention of leaving the district unless the parents lose their position or resign, we are of the opinion that they are bona fide residents of such district and are entitled to have the children sent to the Higginville High School and the sending district pay any deficit in the tuition for such children.

We think your situation is analogous to persons who live in the State Capital and bring their children and place them in the public schools of Jefferson City. They are undoubtedly residing in Jefferson City the length of time they intend to reside and the mere fact that they may vote or pay taxes in some other county would not compel them to pay tuition if their children attend the Jefferson City High School.

Respectfully submitted,

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APPROVED:

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