

SCHOOLS.

School District sending pupils to another district may not claim credit on tuition for taxes paid by residents of its districts to receiving district.

September 8, 1944

Mr. John A. Rauh, Superintendent
Brookfield Public Schools
Brookfield, Missouri

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Dear Mr. Rauh:

This will acknowledge your letter of August 29, requesting an opinion, which is as follows:

"Section 10340 of the Missouri School Laws, 1942 makes a statement on 'credit on tuition taxes paid.' This section indicates 'any person' could this section be interpreted as a 'school district' instead of 'any person.'

"We have a rural school district that is closed and transports its pupils. They have been paying tuition on a pupil for several years. The parent of this pupil lives in the rural district but owns land in the Brookfield School District. Now the rural district claims that the amount of taxes paid in Brookfield District should be deducted from their tuition payment. The rural district pays the tuition and not the parent. This pupil is an elementary pupil.

"We should like very much to have your opinion on the above question."

Section 10324 R. S. Missouri, 1939, provides:

"Whenever any school district in this state, now organized or that may be hereafter organized under the laws of this state, shall fail or refuse, for the period of one year, to provide for an eight months' school in such year, provided a levy of forty cents on the one hundred dollars' valuation, together with the public funds and cash on hand, will enable them to have so long a term, the same shall be deemed to have lapsed as a corporate body, and the territory theretofore embraced within such lapsed district shall be deemed and taken as unorganized territory, and the same, or any portion thereof, may be attached to any adjoining district or districts for school purposes, in the same manner as is now provided in section 10408; Provided, that

no school district shall be deemed to have lapsed where the failure to make the needed provision for the eight months of school results from the irregular or void proceedings had for that purpose; Provided, that in any district enumerating fewer than twenty-five children the board may, from year to year, arrange with the board or boards of other district or districts for the admission of all children of school age in said district containing fewer than twenty-five children enumerated and, if desired, arrange for transporting children to and from school. And, when ratified by a two-thirds vote of the qualified voters of said school district, voting at a special meeting, such arrangements shall be final, and the board will be authorized to issue warrants upon the teachers' funds for payment of tuition, and upon the incidental fund for the payment of cost of transporting pupils. (R. S. 1929, Sec. 9195)."

I assume that the district you speak of is closed for the reason set out in the above statute and that it is therefore sending its pupils to the Brookfield district in accordance with the proviso in the statute. It must be noted that the statute clearly provides for the payment of tuition by the district out of the teacher's fund. The district and not individuals are sending these non-resident pupils to the Brookfield district.

Sec. 10340 R. S. Mo. 1939, provides:

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 expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district and prescribe the tuition fee to be paid by the same,

except as provided for in Section 10458, R. S. 1939: 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. (R. S. 1929, Sec. 9207. Amended, Laws 1939, p. 694.)"

This section clearly applies to individuals who for some personal reason send their children to school in another district even though the school district in which they reside may maintain a school.

The cases have held that where an individual decides to send his children to school in a district other than that wherein he resides he must pay tuition for them. See School District of Barnard v. Matherly, 90 Mo. App. 403; Barnard School District v. Matherly, 84 Mo. App. 14; Binde v. Klinge, 30 Mo. App. 285.

However, when these individuals are paying taxes also in the district in which they were not resident the statute gives them the right "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. The statute, by the use of the words "his or her" would clearly seem to exclude School Districts from claiming this benefit. In any event, the School District doesn't pay the tax to the other district. It is difficult to see how the School District could claim benefits to itself for taxes one of its residents pays in the Brookfield District any more than the Brookfield District could claim any right to the taxes paid by the resident in his home district. Any rights acquired by the paying of these taxes are purely those of the person who pays them.

Mr. John A. Rauh

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Suppose for the sake of argument the School District were allowed to claim benefits of tax payments as one of its residents in another district, then suppose that that resident had another child resident in another district which he personally desired to send to the Brookfield District and for which he personally would be liable for tuition. Could it conceivably be held that the School District and not he would be entitled to claim credit for the tax he was paying to the Brookfield District. We think not.

CONCLUSION.

It is therefore, the opinion of this office that a School District sending its pupils to another District may not claim credits on tuition for taxes paid by residents of its district to the receiving district.

APPROVED:

Respectfully submitted

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