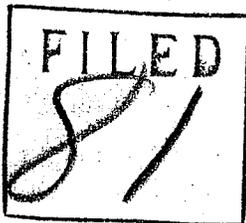


CHILDREN:
PUPILS:
SCHOOL DISTRICTS:
TUITION:

A child having a temporary or permanent home in the school district, said child being unable to pay his tuition, and whose parents do not contribute to his support, is entitled to attend the schools of that district without payment of tuition.



September 28, 1954

Honorable D. W. Sherman, Jr.
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Mr. Sherman:

In your letter of August 31, 1954, you requested an opinion from this office as follows:

"I have recently been asked for an interpretation of whether or not a student is exempt from payment of tuition, as provided in Section 163.101, R. S. Missouri, 1949, under the following conditions:

"A student now 9 years of age, lives with his grandfather, for many years a resident and taxpayer of Reorganized School District No. R-2, Lafayette County, Missouri. The boy, whose parents live in Clay County, Missouri, came to live with his grandparents in the month of April, 1953. No promises were made by the grandfather as to the length of time the boy should stay in his home. With the exception of brief visits with his parents the boy spends all of his time at the farm of his grandfather, assists in doing chores, etc. The boy's parents do not contribute to his support. The grandfather was not asked to pay tuition for the school year of 1953-54 but has been informed by the Board of Education that he is expected to pay tuition for the school year 1954-55. The boy does not live with his grandparents for the purpose of avoiding payment of tuition.

Honorable D. W. Sherman, Jr.

"It would appear under Section 163.101, R.S. Missouri, 1949, that the grandfather should not be required to pay tuition. Furthermore, the case of State ex rel Halbert vs. Clymer, et al, 147 S.W. 1119, seems to be in point. I shall very much appreciate an opinion from your office as to whether or not you deem the grandfather liable for tuition under the factual situation."

We presume that you intend to refer to Section 163.010, RSMo Cum. Supp. 1953, which reads:

"The board of directors or board of education 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 165.257 RSMo; 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."

Honorable D. W. Sherman, Jr.

The above section was interpreted by the Springfield Court of Appeals in State ex rel. Halbert vs. Clymer, 164 Mo. App. 671, 147 S.W. 1119, wherein the court said, at l.c. 678:

"The statute is not ambiguous, and plainly provides that children who are unable to pay tuition, and whose parents are not contributing to their support, shall have the privilege of attending school in any district in which they may have a permanent or temporary home. It will be noticed that the privilege is granted, regardless of the residence or domicile of the parent."

The court further indicated that an exception to the statute might be raised if the pupil were brought into the district temporarily for the purpose of obtaining the benefits of the school therein, without contributing to the support thereof. However, such was not done in that case, and according to your letter was not done in the instant case. If the child is not able to pay his tuition, he falls within the fourth exemption of Section 167.010, and is thus entitled to attend school in the district without payment of tuition.

CONCLUSION

In the premises, it is the opinion of this office that a child having a temporary or permanent home in the school district, said child being unable to pay his tuition, and whose parents do not contribute to his support, is entitled to attend the schools of that district without payment of tuition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General