

SCHOOLS:
SCHOOL DISTRICTS:
DEPARTMENT OF EDUCATION:
BOARD OF EDUCATION:

An elementary pupil of a closed school district, which district was closed by the State Board of Education and required to provide for the transportation of its pupils under Section 161.120 RSMo 1949, who attends a school in another district without conferring with the Board of

Education of the home district, as to where he should attend school, is voluntarily attending such other district and the sending district does not have to pay the tuition and transportation costs of such elementary pupil when it has provided for tuition and transportation expenses to a district other than the one the pupil is attending.

FILED
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October 20, 1955

Honorable William E. Seay
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"I would like to have your department's opinion concerning the following set of facts:

"A certain school district in Dent County had an average attendance during the school year 1954-55 of four pupils and the State Department of Education has declared the district a closed school and informed the Board that the children must be transported to another district.

"In compliance with the director from the Department, the district entered into an agreement with the directors of school district A for a payment of tuition and transportation charges for the children that attended district A.

"Without consulting with the director of the closed district, district B is transporting the children from the closed district

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to the school of district B. The State Department of Education informs districts of the closed district that it must pay district B tuition and transportation charges even though the tuition is much higher than at district A, with the transportation costs of A and B about equal.

"I would like to know if it is incumbent upon the closed district to pay the tuition and transportation charges of district B where there was and is no agreement with district B and where there was and is an agreement with district A."

Also, in answer to my request for further information you state that the county superintendent of schools had not done anything in this matter and had not directed School District A or B to pick up the children. You also stated that these were elementary pupils and not high school pupils and that the sending district did not notify the pupils that it had contracted with District A for transportation and tuition. You further stated that neither the pupils nor the parents inquired of the sending district as to what school they should attend but on their own had District B pick them up and they attended a District B school.

Section 161.020 RSMo 1949, reads as follows:

"If any district in this state shall have an average daily attendance of less than fifteen pupils as shown by the records of the last previous school year, the state board of education shall, in lieu of such state aid, after investigation that convinces it that it would be to the best interests of all concerned, require the board to provide for the transportation of the pupils of such district to other public school, or schools, provided that the total expense, including the transportation and tuition paid by the state, shall not exceed the amount that the state would otherwise have paid to such district."

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Part of Paragraph 4 of Section 165.110, RSMo Cum. Supp. 1953, having to do with school funds states:

"* * * provided, further, tuition and transportation costs shall be paid from either the teachers' or incidental funds when the school in any district has been closed on account of temporary combination or low average daily attendance, as provided by law; * * *"

Thus, reading Section 161.120 in the light of that part of Section 165.110 quoted above, it seems reasonable to construe Section 161.120 as meaning the board of education of a closed district shall provide for the transportation and tuition of its pupils to another public school or schools and that said board of education should pay for same out of its teachers' or incidental fund. This view is strengthened by the fact that the policy of the state is to furnish free education for all children of school age and the construction of any statute pertaining to such education should be liberally construed. *State ex rel. v. Clymer*, 164 Mo. App. 671. Also, since the school district board is the group which conducts the business of the school district (Section 165.207 RSMo 1949) it would seem logically to follow that they should be the ones to decide as to where the elementary children of the closed district should attend school and if an elementary pupil is to be entitled to the free transportation and tuition provided for by the board of the closed district school such elementary pupil should attend the school provided for by the board of education of the closed district. It would further follow that any elementary pupil voluntarily, attending a school other than the one provided for by the board would not be entitled to tuition and transportation expenses. Applying this construction of the law to the facts set out in your request, we find that the board of the closed district has provided for tuition and transportation for its elementary pupils by an agreement with School District A, but the pupils have elected to attend the school in School District B without consulting with the board of education of the closed district, and thus it seems they are voluntarily attending a school other than the one provided for by the board of the closed district. Thus, they are not entitled to tuition and transportation expenses to such school in School District B, and the board of the closed district is not obligated to pay the same. The fact that the board failed to notify the pupils that they had agreed with School District A for the tuition

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and transportation of the pupils to School District A does not change the result reached above since it is the duty of the pupil or his parent to ascertain from the board what school he should attend.

CONCLUSION

It is the opinion of this office that an elementary pupil of a closed school district, which district was closed by the State Board of Education and required to provide for the transportation of its pupils under Section 161.120 RSMo 1949, who attends a school in another district without conferring with the Board of Education of the home district as to where he should attend school, is voluntarily attending such other district and the sending district does not have to pay the tuition and transportation costs of such elementary pupil when it has provided for tuition and transportation expenses to a district other than the one the pupil is attending.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly,

John M. Dalton
Attorney General

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