SCHOOLS:
SCHOOL DISTRICTS:
TUITION:

If a district does not maintain any high school or does not maintain high school facilities in which all high school students of the district can be educated, then as to any high school students which cannot be educated in the district's high school, the district has the duty and authority under Section 161.095, RSMo. Cum. Supp. 1963, to pay their tuition to attend a high school in the same or an adjoining county.

OPINION NO. 78

April 27, 1965

FILED
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Honorable C. M. Blackwell
Prosecuting Attorney
County of Callaway
Fulton, Missouri

Dear Mr. Blackwell:

This official opinion is issued in response to your request of January 21, 1965.

We understand the relevant facts to be as follows:

Recently five school districts maintaining elementary schools and one school district, which maintained elementary and a high school, combined into one district by means of reorganization.

We assume that prior to the reorganization all high school pupils residing in the five elementary districts attended high school in some neighboring high school district as required by Section 161.095, RSMo. Cum. Supp. 1963.

Presently, about 110 pupils are attending the one high school, brought into the district by reorganization. About 170 additional high school pupils, residents of the new district, are attending high school in the Fulton school district. Some of these are attending under authority of Sections 162.100 and 162.110, RSMo 1959. Possibly some are attending under authority of Section 161.093, RSMo 1959.

The new reorganized district is in the process of building a new high school sufficient for its needs.

You inquire as to the authority of the new reorganized district to send high school pupils to another district and pay their tuition.

You are apparently aware of the special provisions of Sections 162.100 and 162.110, RSMo 1959 (regarding pupils enrolled in vocational education), and also the provisions of Section

161.093, RSMo 1959 (authorizing pupils to be assigned to another more accessible school by the county superintendent). We understand your inquiry to be limited to those high school pupils who do not come within these or other special provisions.

We are of the opinion that every school district has a duty to provide primary and secondary education to all residents of the district between the ages of six and twenty.

Article IX, Section 1 (a), Missouri Constitution 1945, provides:

> "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law * * *."

Section 163.160, RSMo 1959, provides:

> "The board of directors or board of education of any school district in this state may provide for the gratuitous education of persons between five and six and over twenty years of age, resident in such school district. Such gratuitous education, however, shall be provided only out of revenues derived by such school district from sources other than those described in section 3, article IX of the constitution of this state, and only with so much of such revenues as are not required for the establishing and maintaining of free public schools in such school districts for the gratuitous instruction of persons between the ages of six and twenty years, provided, that nothing in this section shall be construed as affecting the basis of apportionment of the public school fund of this state as now fixed by law."

In Linn Consolidated School District v. Pointer's Creek School District, Mo., 203 S.W.2d 721, what are now Section 165.013, RSMo 1959, and Section 161.095, RSMo, Cum. Supp. 1963, were before the court. The court held (l.c. 724): "Both statutes are mandatory to the extent that the district can comply by levying the rate of taxes permitted by the constitution."

Section 165.013 mentioned supra, required every district to provide for eight months school each year subject to forfeiture of its organization. (After July 1, 1965, a nine-month term will be required. See: Section 162.081, RSMo. Cum. Supp. 1963 Appendix.)

Section 161.050 mentioned supra, provides in part:

> "1. The board of directors of each 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 pupil resident therein who has completed the work of the highest grade offered in the schools of the district and who 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." (Emphasis added.)

Section 160.051, RSMo. Cum. Supp. 1963 Appendix (effective July 1, 1965) provides in part:

> "A system of free public schools is established throughout the state for the gratuitous instruction of persons between the ages of six and twenty years. . . ."

From the above, we are of the opinion that every school district has the duty to provide elementary and high school education at public expense to residents between the ages of six and twenty.

Obviously if the districts have the duty to provide high school education at public expense, they also have the authority to expend funds to perform that duty.

Not every school district of this state performs its duty of providing high school education by maintaining its own building and staff. But, by the provisions of Section 161.095, if a district does not maintain its own high school, it must perform its duty by paying the tuition of its resident high school pupils and have them attend some neighboring high school.

Section 161.095 qualifies the duty of a school district to pay the tuition of its high school pupils attending another district by the phrase, "[if the district] does not maintain an approved high school offering work through the twelfth grade."

Therefore, if high school facilities are available in a pupil's home district, the district does not have the duty or authority to pay the pupil's tuition at a high school outside the district (except the special situations noted earlier). This office has previously ruled a school district cannot pay the tuition of a pupil who voluntarily attends another district (Opinion 74, Reynolds, 1/17/48, copy enclosed).

We note that if Section 161.095 is considered alone and if the qualifying phrase is read literally, then a district which maintained an approved high school, even though wholly inadequate to contain the high school pupils of the district, would not have the duty to pay the tuition of pupils attending high school outside their home district.

For example, if the district had 1,000 high school pupils but only facilities for a maximum of 100 pupils, 900 pupils would have to look elsewhere for schooling. Such a circumstance would rarely exist, but might arise from a fortuitous event as fire or natural disaster or from a sudden influx of population. The 900 pupils, hypothesized above, are compelled by law to attend school. Section 164.010. If they attend a school other than in their home district, that district may charge them tuition (Section 163.010), and may refuse admission if the tuition is not paid (Opinion 95, Wessel, 1/31/51, copy enclosed).

Thus, if Section 161.095 is read literally, the district of residence could avoid its duty to provide gratuitous education to its residents by transferring the expense to the pupil or parents. Such a construction would be contrary to the school laws noted supra.

> "It is a cardinal rule, universally accepted, that in the exposition of a statute, the intention of the lawmaker will prevail over the literal sense of the terms; its reason and intention will prevail over the strict letter." State v. Schwartzmann Service, Mo.App., 40 S.W.2d 479, 480."

> "'We may not capriciously ignore the plain language of the statute but in determining what the language really means we may consider the entire purpose and policy of the statute and "the language in the totality of the enactment" and construe it in the light of "what is below the surface of the words and yet fairly a part of them"'." State v. Proctor, Mo., 361 S.W.2d 802, 805.

The qualification, "does not maintain an approved high school" must be read in context with the school laws of this State.

We are of the opinion that the qualification must be read in relation to the district's obligation to the resident high school pupils. For example: as to the hypothetical 900 pupils, the district does not maintain an approved high school and therefore would have the duty to provide for the education elsewhere.

We note that a district which does not own sufficient buildings may rent or lease space for school purposes. Section 166.010. We are informed that some school districts are renting other buildings in their communities in order to accommodate their pupils. Also, under Section 161.095, a school district may maintain only the lower high school grades and pay the tuition of pupils above those grades who attend high school outside the district.

Caveat: This opinion should not be construed as authorizing school districts to pay the tuition of high school students attending a high school outside the district merely because of crowded classrooms or variations in curriculum, etc.

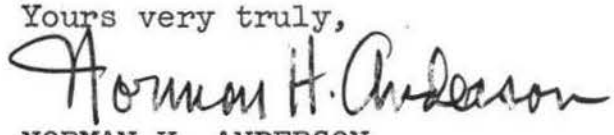
As to the authority of the North Callaway R-1 District to pay tuition of its high school pupils attending the Fulton District, we could not express any particular opinion without knowledge of all the facts and circumstances, i.e., the number of pupils now attending under Sections 162.100 or 161.093, the capacity of the R-1 schools, etc. Furthermore, such a factual judgment, within the legal rules we have set out above, should in the first instance be made by the R-1 school board. If they abuse their discretion, they are of course subject to legal restraints.

CONCLUSION

Therefore, it is the opinion of this office that each school district has the duty to provide at public expense elementary and high school education to residents of the district between the ages of six and twenty. If a district does not maintain any high school or does not maintain high school facilities in which all high school students of the district can be educated, then as to any high school students which cannot be educated in the district's high school, the district has the duty and authority under Section 161.095, RSMo. Cum. Supp. 1963, to pay their tuition to attend a high school in the same or an adjoining county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,



NORMAN H. ANDERSON
Attorney General

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