

SCHOOLS:  
SCHOOL BOARD:  
SCHOOL TAX:  
SCHOOL DISTRICT:  
TUITION:

A school board may set a tuition rate which is not the actual per pupil cost except as expressly limited by statute. A parent may send his children to a public school in the district in which he pays a school tax. A school board does not have the right to refuse admittance to the child of a school taxpayer in that district.

December 12, 1967

OPINION NO. 235 - 67



Honorable Melvin D. Benitz  
Prosecuting Attorney  
County of Callaway  
State of Missouri  
Fulton, Missouri

Dear Mr. Benitz:

This official opinion is in response to your letter, April 19, 1967, in which you ask what limitations a school district has in setting tuition rates, whether or not a school board may refuse admittance to the child of a non-resident taxpayer, and if they may not refuse admittance to this child under Section 167.151(3), RSMo Supp. 1965, whether or not they may refuse to admit him under Section 167.131(2), RSMo Supp. 1965.

Your first question is:

"Under 167.151, RSMo 1959 Supp., may a district set a tuition rate that is unrelated to actual per pupil cost, provided that it also refuses to admit any students under Section 167.131 RSMo 1959 Supp.?"

Section 167.151(1), RSMo Supp. 1965, clearly states that a school board in its discretion may admit pupils not entitled to free instruction "and prescribe the tuition fee to be paid by them, except as provided in Sections 167.121 and 167.131." The express limitations are as follows:

(1) Section 167.121, RSMo Supp. 1965: provides that the county superintendent may assign a pupil to a school in another district which is more accessible and that "The tuition shall not exceed the pro rata cost of instruction."

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(2) Section 167.131, RSMo Supp. 1965: provides that a district without a high school shall pay the tuition of its residents attending high school in another district, and provides the rate of tuition to be charged.

If a pupil is covered by either of the above sections, then the school must charge the tuition required by statute, and no more. These are the only express limitations on the rate of tuition. In other situations, the board may charge a tuition which is not the actual per pupil cost and is limited only by standards of reasonableness.

Your second question is:

"Does the word 'may' in Paragraph 3 of 167.151 RSMo Supp., permit a school board to refuse admittance to a child of a non-resident taxpayer?"

Section 167.151, RSMo Supp. 1965, provides in paragraph (3) that "Any person who pays a school tax in any other district than that in which he resides may send his children to any public school in the district in which the tax is paid and receive as a credit on the amount charged for tuition the amount of the school tax paid to the district."

The word "may" means that the parents have the discretion to send their children to any public school in the district in which the tax is paid. Obviously, "may" cannot be read as "shall" in this sentence.

The problem, however, is whether or not the school district has the discretion to refuse these pupils. Paragraph (1) of Section 167.151, RSMo Supp. 1965, states that, "The school board of any district, in its discretion, may admit to the school pupils not entitled to free instruction and prescribe the tuition fee to be paid by them, except as provided in sections 167.121 and 167.131."

Section 167.151(3) provides for a credit on the amount charged for tuition, so these pupils are not entitled to free instruction. The language of this statute emphasizes the board's power to admit by saying that the board has the discretion to "admit" rather than saying the discretion to "refuse to admit". It seems that the intent of this section was intended to broaden the powers of admission, and paragraph (1) does not limit paragraph (3). A parent under paragraph (3) "may send his children to any public school in the district in which the tax is paid" and the school board of that district does not have the discretion to refuse them admittance.

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The sources of Section 167.151, RSMo Supp. 1965, were Sections 163.010 and 165.393, RSMo 1959. Both these earlier statutes used the language "shall be entitled" where "may" is used in the present statute. Section 163.010 enumerated certain powers of the board of education but provided 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."

Section 165.393 also enumerated powers of the board and then provided that, "any person not a resident of said school district and who pays a school tax therein, shall be entitled to send his or her children to any public school in said district and receive as a credit on the amount charged for tuition the amount of such school tax so paid to said district." These provisions limited the school board's power to exercise its discretion to refuse such pupils. The language of these two statutes was clear; a parent paying taxes in a school district has a right to send his child to school there. These statutes were consolidated into Section 167.151, RSMo Supp. 1965, and there is no evidence that the legislature intended to change the essence of these provisions by changing "shall be entitled to" to "may". This simplification of language does not change the meaning of the provision.

A basic rule of statutory construction is that we are to take words in their common meaning, Lansdown v. Faris, Mo., 66 F. 2d 939, 942. "May" in its ordinary meaning is permissive or power giving and means "shall be entitled to."

"Taken in its natural and ordinary sense, the word 'may' does not import a command, but merely signifies permission, ability, or possibility, and generally it denotes that the action spoken of is optional with the person concerned, or rests in the discretion of the court or body to which permission is given. And the word always retains its primary meaning, unless a different construction is necessary to give effect to the clear purpose and intention of the Legislature, to make the statute accord with settled public policy, or to save the rights of parties in interest." People v. DeRenna, 2 N.Y.S. 2d 694, 700, 701; 166 Misc. 582.

Here "shall be entitled to" is the construction which gives "may" its primary meaning and effects the purpose of the legislature which is to let a person paying school taxes, directly benefit from his tax money. Whether or not a person is a bona fide taxpayer must be determined on the facts of each case.

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Your third question is:

"If the answer to (2) above is 'no', can a non-resident, who is a resident of a district that has no high school, contravene the school board's right to refuse admittance to a non-resident high school student under 167.131 RSMo Supp, by buying a small parcel of real or personal property in the district, and having it placed on the tax books, and then invoke the provision of 167.151 RSMo 1959 Supp.?"

A different problem is presented when a resident of a district without a high school buys real property in a district with a high school. His buying personal property would not make him a taxpayer in that district because all tangible personal property is assessed in the school district in which the taxpayer resides. (Section 164.041, RSMo Supp. 1965).

First, the school board could not refuse admittance to a non-resident high school student if his parent pays a school tax in that district, (Section 167.150, RSMo Supp. 1965). However, if a parent purchases or leases real property with a very small or nominal value and pays a minimal tax, his status as a bona fide taxpayer is questionable. Whether or not a person is a bona fide taxpayer must be determined on the facts of each case.

Section 167.131, RSMo Supp. 1965, also applies. This section provides a system of tuition payments by a school board in a district without a high school to an approved high school in another district which a resident of the first district attends.

Paragraph (1) states that the school board shall pay the tuition, paragraph (2) regulates the rate of tuition to be charged per pupil; how disputes are to be resolved and finally says that, "Subject to the limitations of this section, each pupil shall be free to attend the school of his or her choice; but no school shall be required to admit any pupil." This sentence does not apply to children of school taxpayers covered by Section 167.151, RSMo Supp. 1965. That section expressly provides that children of school tax payers may attend school in the district in which the tax is paid. The board may not refuse these pupils because they are also pupils from a district without a high school and the board's rate of tuition for these pupils is regulated by Section 167.131, RSMo Supp. 1965.

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CONCLUSION

It is the opinion of this office that a school district may set a tuition rate which is not the actual per pupil cost unless the pupil has been assigned to a more accessible district by the County Superintendent of Schools or the pupil resides in a district without a high school. Sections 167.151, 167.121, 167.131, RSMo Supp. 1965.

A school board may not refuse admittance to the child of a person who pays school taxes in the district. The word "may" in paragraph (3) of Section 167.151, RSMo Supp. 1965, gives the parents discretion to send their children to a public school in the district in which they pay school taxes, and does not give the school board discretion to refuse to admit them.

Section 167.131, RSMo Supp. 1965 does not give a school board the right to refuse admittance to the child of a person paying a school tax in that district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Deann Duff.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General