SCHOOLS: TUITION REQUIRED AND ALLOWED FOR NON-RESIDENT HIGH SCHOOL PUPILS

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Mr. Alvin H. Juergensmeyer,
Prosecuting Attorney, Warren County,
Warrenton, Missouri.

Dear Sir:

Your letter of August 28, 1933 to the Attorney General has been received, containing a request for an opinion as follows:

> "1. District A charges non-resident pupils $65 tuition. Directors of District B, a rural district, are willing to pay or to guarantee the sum of $15 being the expense above $50 guarantee by the state. Can a high school demand that a rural district guarantee the full $65? Will a rural district be required to pay the $15 and the additional sum not paid by the state?
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> 2. If the rural district guarantees $15 and refuses to guarantee the balance, can a high school district refuse to allow a student from the rural district to enroll in the high school?
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> 3. If the Board of Directors of a rural district refuse to guarantee or pay any sum to the high school, can a student from the rural district compel the rural district to guarantee or pay the tuition in the high school?"

Revised Statutes Missouri 1929, Section 9207, which is applicable to all classes of schools, provides in part as follows:

> "The board (of directors of every school district) * * * may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same:* * *"

Revised Statutes Missouri 1929, Section 9399, provides in part as follows:

> "Any town, city or consolidated school district * * *in order to receive state aid shall show * * * that it admits non-resident pupils to said high school on payment of a reasonable tuition fee * * *".

Revised Statutes Missouri 1929, Section 9400, which provides for state aid for high schools in counties not having any high school which maintains an average daily attendance of 15 pupils, so that this Section 9400 would not be applicable to your case insofar as state aid is concerned, contains the following proviso:

"It is further provided that any school district receiving aid under the provisions of this article shall admit non-resident pupils to the high school of said district on the payment of a reasonable tuition fee * * *".

It will be observed that the proviso just quoted refers to the entire article in which that section has a place (Chapter 57, Article 7, R. S. Mo. 1929) so that such proviso would be applicable to Section 9399 which is within Article 7 under which we assume the high school in question received state aid.

The three sections of the statute above quoted represented the law of this state as it stood before the 1931 Session Acts. Section 9207 made the admission of non-residents and the tuition fee which could be charged discretionary in the board of directors of the school district in which the high school attended by non-residents was located. Sections 9399 and 9400 made it compulsory upon such board of directors to allow non-residents to attend upon payment of a reasonable tuition fee, but apparently the question of determining what was a reasonable tuition fee was not assumed by the Legislature, but was left to the determination of the board of directors of the district of attendance. Such was the law before 1931.

In 1931 a new scheme was provided by statute for the attendance in high schools of non-resident pupils, such new scheme being enacted as Laws of 1931, page 334, the sections of such Act which are applicable to the present opinion being Sections 13 and 16.

Section 16 provides as follows:

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"Sec. 16. Tuition, districts to pay for high school students.- The board of directors of each and every 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 and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per-pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term, which deduction shall be added to the equalization quota of the district maintaing the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota; if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year; but the attendance of such pupil shall not be counted in determining the teaching units of the district maintaining the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental expenses. In case of any disagreement between districts as to the

> amount of tuition to be paid, the facts shall be submitted to the state superintendent of schools, and his decision in the matter shall be final: Provided further, that when any school district makes provision for transporting any or all of the children of such district to a central school or schools and the method of transporting and the amount paid therefor is approved by the state superintendent of schools, the amount paid in state funds for transportation, not to exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district: Provided, the provision of this act regarding the payment of tuition and transportation shall apply if the students attend any school supported wholly or in part by state funds."

Before the enactment of Section 16 just quoted any high school receiving state aid was required to admit non-resident pupils, but the method of determining the tuition fee to be charged was only covered by the word "reasonable". However, in Section 16 a precise method of computing tuition to be charged as well as a requirement as to how and by whom it should be paid was provided, i. e., that the school district where the pupil resides must pay such pupil's tuition, with the amount of such tuition specifically provided for by the following provision:

> "But the rate of tuition paid shall not exceed the per pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term,".

A school district cannot require a pupil resident therein to pay anything as tuition. "Section 1 of Article 11 of our Constitution made it the duty of the General Assembly to establish and maintain free public schools for the gratuitous instruction of all personsiin the state, between the ages of six and twenty years. Pursuant to the mandate free public schools have been established throughout the state, and District No. 107 is one of the free public schools established for gratuitous instruction. The right of children, of and within the prescribed school age, to attend the public school established in their district for them is not a privilege dependent upon the discretion of anyone, but is a fundamental right, which cannot be denied, except for the general welfare." State ex rel Roberts v. Wilson, 221 Mo. App. 9, 297 S. W. 419, 420 (1927).

The Legislature by Section 16 of the 1931 Act above quoted has made it compulsory upon school districts to receive non-resident pupils for high schools under certain fixed conditions, and to receive them without calling upon such pupils to pay any tuition, As before that Act it was compulsory to accept resident pupils without charging them any tuition, so it is believed that the above quotation from State ex rel Roberts v. Wilson would be as applicable to non-resident high school pupils under the 1931 Act as before 1931 it was applicable to resident pupils. It is therefore clear that under the present law the district in which a non-resident pupil attends high school cannot require such non-resident pupil himself to pay any tuition.

Under Sections 9399 and 9400 R. S. Mo. 1929, quoted above, each high school receiving state aid is required to admit non-residents. Under Section 16 of the Act of 1931 quoted above, the fee for tuition which shall be paid to and charged by such high school where a non-resident attends is definitely fixed by law as the "per-pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term" so that the board of directors of the high school attended by such non-resident no longer has any discretion about either admitting non-residents or fixing their tuition. Furthermore, the district where such pupil resides, while it is compelled by Section 16 to pay tuition at the rate just set out, is prohibited from paying any more than the amount fixed by such section, for the statute says "but the rate of tuition paid shall not exceed" the above computation, so that it would be illegal for the school district where the pupil resides to pay more than the rate fixed by this section.

The risk of loss of the fifty dollar payment for each pupil by the state from the public school fund is put upon the district where the pupil attends because by Section 13 of the Act of 1931 it is provided as follows:

> "In the event the amount of money in the public school fund is not sufficient to pay these quotas in full the state superintendent of schools shall pay such percentage of both the equalization and attendance quotas as the amount in the public school fund will permit:* * *"

Thus, while the district of attendance can only collect, and the district of residence can only pay, tuition in the amount of the per-pupil cost of maintaining the school of attendance minus fifty dollars, Section 13, a part of which has just been quoted, contemplates that the district of attendance may receive less than fifty dollars per pupil although it is required by Section 16 to deduct this fifty dollars at the outset of the term without any allowance being made in the event less than fifty dollars is received from the state.

A word of explanation should be made regarding the provision in Section 16 as follows:

> "In case of any disagreement between districts as to the amount of tuition to be paid, the facts shall be submitted to the state superintendent of schools, and his decision in the matter shall be final:* * *"

Since the statute fixed the method of computation the only thing about which there could beaa disagreement within the meaning of this provision would be the per-pupil cost of maintenance of the school attended, and the power of state superintendent of schools could not be exercised to make any change in the fifty dollar deduction.

It is our opinion that any high school in this state receiving state aid must admit non-resident pupils whose tuition must be paid by the districts where such pupils reside, and that the tuition so paid must be the per-pupil

cost of maintaining the school attended less a $50.00 deduction for each pupil.

Thus the answers to your three questions would be as to the first and second, No, and as to the third No as to the refusal to pay any sum, and Yes as to the right of the student to compel the rural district to pay his tuition as above computed.

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Your letter asked for an opinion on the construction of the statutes involved, and such an opinion is complete above. However, a discussion of the constitutionality of the non-resident high school pupil tuition law, and especially of Laws 1933 page 334 above discussed, might be appropriate, although such a discussion was not requested, and although we refrain herein from making a ruling of this department on such constitutionality. Two possible grounds of invalidity might exist (1) the fact that the taxes of the school district of residence might be construed as not being taxes for a public purpose within the meaning of Constitution of Missouri Article X Section 3 which provides that "taxes may be levied and collected for public purposes only", because such school district taxes would under the statutes be used in part to pay the tuition of individuals instead of to maintain the public schools, and (2) the fact that under such statutes, if the fifty dollars per pupil of state aid or any part thereof should not be received by the school district of attendance, the taxpayers of such school district might be paying for the education of non-residents in such a way as to discriminate against resident pupils, for the attendance of such non-residents would not be bringing to the school district of attendance their pro rata share of the expense of maintaining the school attended, and taxes to make up this difference might be regarded as a violation of the Constitution of the United States, Amendment Fourteen, providing that "No State shall * * * * deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(1) The case of State ex rel Garth v. Switzler, 143 Mo. 287, 45 S. W. 245 (1898) suggests the first ground of doubt. In that case it was held that an inheritance tax of Missouri was unconstitutional on the ground that a part of its proceeds was to be used to provide free scholarships to Missouri students at the state university, and that such a use was not a public purpose within Article X, Section 3 of the Missouri Constitution. The tax statute in that case provided as to such scholarsthat "they shall be entitled to enter thereon free of matriculation fees any department, school or college of the university, and have paid to them in equal monthly installments while attending the university, the sum provided by the scholarship so awarded, for defraying the expenses of such attendance" 143 Mo. 321. From the language just quoted, and from the opinion of the court as a whole, it is clear that the scholarship money was to be used solely for personal expenses, such as food, lodging, clothing and general expenses, as distinguished from tuition. In a sense it is true that those expenses are a necessary part of each student's education, in that it would not be possible to get an education at a university unless some means of obtaining food, lodging, clothing etc. were available, but as far as the maintenance of a University as an institution diffusing knowledge is concerned, they are irrelevant. Money so spent enables the student physically to attend the

university, but does not at all assist the university to maintain itself, except in the sense that unless some students were able to attend it, the university could not successfully operate. Such expenses are entirely different from tuition scholarships, the entire money from which goes to the university to maintain it . The money under the statute in the Switzler case went both immediately and ultimately to the scholars, and there was no requirement under the statute that any part of it should ever reach the university. The court in the Switzler case seemed to recognize the distinction by saying at page 324:

> "It is one thing to provide for the establishment and maintenance of a State university, and a system of free public schools, the State through its own officers, agencies and municipalities constructing and owning the buildings and apparatus and employing the teachers as public functionaries, responsible under her own laws for the discharge of their duties; and a wholly different thing to support private individuals who attend the university and public schools by public taxation."
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> "The act under consideration endows the scholar, not the university. It provides in unmistakable terms that a fund shall be raised by taxation and paid over to students attending the university for their support while so engaged. It is a pure and simple gift of public money by the State to private individuals for their own private use in plain violation of section 46, article IV of the Constitution, which prohibits the legislature from granting 'public money to any individual, association of individuals, or other corporation whatsoever.' We hold that when the Constitution provided for the establishment and maintenance of the university, it conferred authority to support an institution belonging to the State, and this grant is not to be extended to the unlimited support of the pupils who may attend or desire to attend that school."

If the state funds in the act held invalid in the Switzler case had gone to the university for tuition, instead of for the personal support of students, it would hardly seem open to the same objection, for all state money appropriated for the universitythis generally speaking really tuition fees for the students in attendance.

The high school tuition law under consideration is not to pay for the support of any pupil. No part of the money paid as tuition ever gets into the pupils' hands, but all of it goes to the school of attendance. The district of residence is required to raise taxes to give its residents high-school educations. If a sufficient number of residents are of high-school age and qualifications, the money raised for high-school purposes is required to be spent in offering such facilitiesto them, and if a smaller number exists, the school district is likewise compelled to offer such facilities by paying a part of the

expenses of operating the school of attendance. This seems no less a public purpose than maintaining a high-school in the district of residence, and it would seem impossible for a taxpayer in the district of residence to show any damage because if the district of residence attempted to operate a high school of its own, with too few pupils to justify it, the expense would necessarily be greater.

(2) The due process and equal protection of laws objection to the statutes in question might cause some difficulty. If the district of attendance should not receive its fifty dollars per pupil from the state, then the taxpayers of such district would be supporting in part the residents of another district, which latter would be relieved to that extent from furnishing a high-school education to its residents, and this might violate both clauses of the United States Constitution just mentioned, if such a situation was forced on the district of attendance by the State. However, the statutes in question are worded so as to avoid this objection. Thus R. S. Mo. 1929, Secs. 9399 and 9400 make the admission of non-resident pupils merely a condition precedent to state aid, and Laws 1933, p. 334, Sec. 16, applies only to schools receiving state aid. Thus the high schools are not forced to accept non-resident pupils on terms dictated by the State, but are only offered state aid if they will accept such terms, and this seems not so unreasonable as to be an arbitrary condition, for the state aid of R. S. Mo. 1929 secs. 9399 and 9400 is balanced against the risk of not receiving a part or all of the fifty dollars per pupil under Laws 1933, page 334, Sec. 16.

Yours very truly,

APPROVED: ASSISTANT ATTORNEY GENERAL.

EDWARD H. MILLER

ATTORNEY GENERAL.