SCHOOLS: Sending school must pay entire tuition of pupil, receiving credit up to $50.00 if the State has the money.

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August 28, 1934.

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Mr. G. C. Jones
County Superintendent of Education
Laclede County
Lebanon, Missouri

Dear Mr. Jones:

This is to acknowledge your letter which, in part, reads as follows:

> "I am enclosing a clipping from the local paper here regarding the last decision given by the Supreme Court. I want you to read it and tell me if it corresponds to the Court's words on the matter. I think it is misleading."

The clipping enclosed referred to the recent case of State ex rel. Mildred Burnett, Relator, v. School District of the City of Jefferson, et al., Respondents (not yet officially reported).

The facts in that case showed that Mildred Burnett was "a minor between the ages of six and twenty years; that she and her parents are residents of School District No. 114, Callaway County, Missouri, a common school district; that the school district of her residence maintains no high school and no classes beyond the eighth grade; that she has completed the course of study provided in her district and is fitted in every way to enter and pursue the courses of study provided in respondents' high school; that the high school maintained by respondents is in an adjoining county and the most convenient high school for relator to attend; that respondents have denied her admission therein; that the respondent school district is a city school district within the meaning and under the provisions of Article 4 of Chapter 57 R. S. Mo. 1929 and all amendments thereto; that it applies for and receives state aid for the maintenance of said high school; that it has not received and will not receive during the current school year the full sum of fifty dollars from the State of Missouri; that the average cost of

furnishing high school education for the current year is seventy-five dollars per pupil; that the school district of relator's residence has paid and is willing and able to pay to respondent district for relator's tuition the sum of twenty-five dollars for the current school year in the manner and upon the terms prescribed by law; that respondents have demanded and now demand that in addition to the sums so paid and to be paid by the school district of relator's residence and paid or to be paid by the State of Missouri, relator or her parents pay to respondent district an incidental fee of three dollars per month; that relator and her parents have refused to pay this fee and that she is refused admission to the high school conducted by respondents solely because of such failure to pay the same."

This was the second submission of the original proceedings by mandamus. In the first proceedings the court granted its alternative writ and upon motion for rehearing quashed its alternative writ, holding:

> "It must be conceded that upon rehearing 'a case stands just as if it had not been previously heard and submitted.'"

Thus, the former opinion rendered by this court in the same cause is not of any force and effect. We call attention to this fact for the reason that when the court's first opinion in this case was handed down we caused same to be digested and copies sent to various parties interested in this matter. See our opinion dated May 25th, 1934. As far as our former opinion (or opinions) conflicts with this one, such is (are) overruled.

The controversy relative to non-resident high school pupils hinges upon the construction to be given Section 16, Laws of Missouri, 1931, pp. 343,344, amended 1933. Said section provides:

> "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 maintaining 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."

The court in its opinion, relative to the above section, held the following:

> "A complete scheme for the payment of the tuition of non-resident pupils thus having

> been provided we cannot escape the conclusion that it was intended to be exclusive and that respondents are without power to charge tuition in any other way. With respect to payment of tuition of non-resident pupils the provisions of old section 9207 and section 16 of the new law are inconsistent and the later enactment must prevail."

Thus, we start with the premise that Section 16 prevails in the matter of high school tuition of non-resident pupils.

I.

Although Section 16 governs with reference to tuition of non-resident pupils, yet, the court held that the high school, even though it receives state aid, could not be compelled to admit non-resident pupils, and its refusal to admit does not deprive it of state aid. Quoting from the opinion:

> "However, as we have already suggested, even though respondents are without legislative authority to require relator or her parents to pay tuition, it does not necessarily follow that they can be compelled to admit her."

And further,

> "Though repeatedly questioned at the rehearing as to other forms of state aid received by respondent school district, counsel for relator and the Attorney General have failed to cite any that would place respondents under mandatory legal obligation to admit relator, or to state any valid reason why respondent school district, even though it receives state aid, should be compelled to admit non-resident pupils."

Thus one of the holdings of the court in the above case being: That the high school does not have to admit non-residents.

II.

The court held, however, that if non-resident pupils are admitted then the high school could not charge the pupils or their parents any tuition fee (or any other fee) but that the provisions of Section 16 govern. We quote from the court's opinion:

> "If respondents admit relator they must do so under the provisions of section 16, because it is conceded that respondent school district receives state aid and section 16 expressly provides that the provision of the act, of which it is a part, regarding the payment of tuition 'shall apply if the students attend any school supported wholly or in part by state funds'."

And further,

> "A complete scheme for the payment of the tuition of non-resident pupils thus having been provided we cannot escape the conclusion that it was intended to be exclusive and that respondents are without power to charge tuition in any other way."

III.

Above we have shown that a high school receiving state aid does not have to admit non-resident pupils but if they admit such pupils, then they are powerless to charge tuition in any other way other than as prescribed by Section 16, supra.

The question now arises, that if the high schools accept non-resident pupils, then, who pays the tuition, and the amount? We quote further from the court's opinion:

> "Now, although section 16 contains no express provision that a non-resident pupil shall not be required to pay tuition, it does provide a complete and apparently exclusive scheme for its payment. First, it unequivocally requires

> the district of residence to (italics ours) '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'. Second, it expressly limits the amount of tuition by providing that (italics ours) '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 maintaining the school attended, as calculated for the ensuing year, * * * 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'. Third, as already stated, it specifies that (italics ours) 'the provision of this act regarding the payment of tuition * * * * shall apply if the students attend any school supported wholly or in part by state funds'."

And further,

> "It is now conceded by all parties hereto that the provision in section 16 for payment by the state of $50.00 tuition per non-resident attending pupil is in reality state aid to the sending district and not to the receiving district."

Thus, the court has said that the sending district must pay the tuition of its pupils attending a high school and the fifty dollar deduction to be paid by the State is state aid to such sending district. In other words, the aid is one to the sending district and not to the receiving high school. Thus it

follows that the sending school district is liable to the receiving school district for all of the tuition of the pupils from its (sending district) school to the receiving high school. If the state pays $50.00 or any part thereof, it is applied as a credit to the sending district's obligation of tuition payment. In other words, the sending district is primarily liable for all of the tuition (per-pupil cost) due the receiving high school district, and if the state has the money it will pay the first $50.00 of the per-pupil cost on this obligation of the sending district. But, the state does not give anything to the sending district, but pays it direct to the receiving high school, thus making the payment of the state's part a matter of bookkeeping only and the effect of same being an aid by the state to the sending district. However, if the state only has enough money to pay a part of the $50.00, then only the part the state pays is credited on the tuition.

We conclude, and such is our opinion, that: (1) The highschool does not have to accept non-resident pupils and by doing so it does not forfeit its state aid; (2) if the high school accepts non-resident pupils, then it cannot charge the pupil any fee (tuition or incidental); (3) the sending school district must pay the entire per-pupil cost of the pupils attending the high school, receiving a credit of what the state pays to the receiving districts, an amount not to exceed, however, $50.00.

IV.

We desire to have you bear in mind that we are only interpreting the law as it is written without regard to the equities involved, and remind you of our inability to change or remedy the difficulties surrounding the schools. We quote the language of the court in the above case:

> "It is true that in the present condition of the state's revenue the ambitous hope, which seems to have inspired section 16 of the act of 1931, that gratuitous instruction would be thus afforded non-resident attending pupils, becomes highly

illusory. But the remedy is legislative rather than judicial. If unforseen difficulties have disrupted the plan it may be repaired or changed by appropriate legislation. We should not try to meet the emergency by judicial misinterpretation of the plan."

We are mindful of the fact that the law as now written may cause many pupils to be refused admittance to high schools because the districts in which they reside may not have sufficient funds with which to pay the tuition charge of 1934-35 or because of the state's failure to pay all of that provided by statute, to-wit, $50.00. Therefore, we take the liberty of offering a suggestion, due to the unusual financial conditions that exist, that the rural district, the high school and the pupil cooperate so that an unnecessary burden will not inure to either party. If the receiving high school cannot accept non-resident pupils because the sending school district does not have funds with which to pay the tuition (and such due to no fault of the sending district), then we see no reason why the pupil should be denied admission to the high school if such voluntarily pays the deficiency, if any, of either the state or sending district. If the pupil voluntarily pays what the state or district fails to pay will result in: (1) That the pupil will be allowed to attend the high school, and (2) the high school will obtain a sufficient reimbursement of what it cost to educate the pupil. We earnestly hope that the high schools will make all possible concessions so as to effect the noble purpose of the Legislature in attempting to provide a high school education to all that desire one. Of course, the high school cannot make a ruling to the effect that the pupil must pay such deficiency, if any. However, if it is a voluntary act on the part of the pupil in paying so that such may attend the high school, then, in our opinion, whatever the pupil would pay would be legal and the high school would be within the law in accepting such voluntary contribution. School District of Barnard v. Matherly, 90 Mo. App. 403.

Possibly such a plan as above outlined will temporarily relieve the tuition problem until the Legislature can correct the difficulty.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG