

SCHOOLS: Mandamus will lie to compel a superintendent of schools to release for credit at another high school the credits of a pupil who has met every lawful requirement therefor.

4-20
April 17, 1935.

Hon. G. C. Jones
County Superintendent of Schools
Laclede County
Lebanon, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of recent date requesting an opinion from this office which reads as follows:

"I would like to have the opinion of your office on a matter which is in regard to the holding up of high school boys' and girls' credits because of the fact that their parents have not paid some back incidental fees that the Superintendent charged as tuition under the new law of 1931.

"Here is what happened: A number of boys and girls have attended the Lebanon High School for three years, did the work outlined by the Superintendent and teachers, made passing grades, which are recorded on the books of the Lebanon High School. Some of them have moved to another county and entered High School for the purpose of finishing their last year's work and are now ready for graduation, but the Superintendent of the Lebanon High School has refused to give them a transcript of their grades made in that school unless the parents pay up these incidental fees which are in arrears and which have been charged by him.

"We want to know what recourse the boys and girls have, as it seems unfair for them to be deprived of their diplomas. Can the Superintendent of the Lebanon High School be compelled to issue a transcript of the grades of these pupils regardless of whether or not the above mentioned fees have been paid by their parents?"

This department, in an opinion rendered under date of August 28, 1934, signed by James L. HornBostel, Assistant Attorney-General and approved by Attorney-General Roy McKittrick held that,

"We conclude and such is our opinion that, **** (2) If the High School accepts non-resident pupils then it cannot charge the pupils any fee (tuition or incidental)."

Thus, we start with the premise that a high school cannot charge a non-resident pupil any tuition or incidental fee. We now pass to the question of whether the Superintendent can be compelled to issue grades to non-resident pupils who have not paid the incidental fee charged by said high school?

In the case of State ex rel. Roberts v. Wilson, 297 S. W.419, it was held that mandamus would lie to compel the principal and board of directors of an incorporated school district to issue a certificate of graduation to a pupil who has met every requirement for its issuance except the payment of a tuition fee which the board's predecessor had attempted, without legal authority, to exact and it was further held that mandamus would lie to compel the principal and board of directors of a public school district to release for credit at another high school the school credits of a pupil who has met every lawful requirement therefor. The Court at loc. cit. page 422 said:

"(8) Will mandamus lie to compel the removal of the condition upon the release of relator's high school credits? The question here presented is, in effect, disposed of supra. We have already ruled that the board of directors had no lawful right or authority to

exact tuition of relator for attending the high school. Such being the case, there is no ground for refusing to remove the condition upon the release of relator's high school credits. By refusing to remove the condition upon demand or request, respondents, as in their refusal to deliver the certificate of attainment, approved the action of their predecessors, and the condition became their condition, not only by succession, but by ratification, and approval.

"It is our conclusion that mandamus will lie against respondents to compel the removal of the condition upon the release of the high school credits."

CONCLUSION.

It is therefore the opinion of this department that a Superintendent of a High School and the Board of Directors thereof can be compelled by a writ of mandamus to release for credit at another high school the full credits of a pupil who has met every requirement therefor except the payment of a tuition fee which the board of directors has attempted to exact without legal authority.

Yours very truly,

APPROVED:

J. E. TAYLOR
Assistant Attorney-General.

ROY MCKITTRICK
Attorney-General

JET/afj