SCHOOL DISTRICTS: When entitled to credit due resident under Section 9207, R. S. Mo. 1929.

11-22

November 21, 1935.

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

Dear Sir:

This is to acknowledge your letter dated November 1, 1935, as follows:

> "I would appreciate an opinion on the following questions:
>
> "1. A lives in school district B and owns property in Warrenton, Missouri, where a high school is located. If A send his children to high school in Warrenton will school district B be required to pay the full amount of tuition or is district B entitled to credit on the high school tuition of said students in a sum equal to the amount of the school taxes paid by A in the city of Warrenton as per Section 9207 RSM 1929?
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> "2. School district C has been paying high school tuition for students out of district C who are attending high school at Warrenton. One of the students has reached the age of 20 years and another is 21 years. Is district C required, under Section 9213 RSM 1929, to pay the tuition of said students until they complete the high school course regardless of their age?"

I.

We assume from your inquiry that School District B does not maintain an approved high school offering work through the twelfth grade, and by reason of that fact are sending their pupils to Warrenton, which we further assume is an approved high school and located in another district of the same or adjoining county.

Laws of Missouri, 1935, Section 16, page 351, provides that under the above circumstances, School District B must pay tuition for such pupils.

Section 16, supra, 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, 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; 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 pupils shall not be counted in determining the teaching units of the school

> attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental purposes. In case of any disagreement 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. Subject to the limitations in 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, nor shall any school be denied the right to collect tuition from a pupil, parent, or guardian, if the same is not paid in full as herein before provided. In no case, however, shall the amount collected from a pupil, parent, or guardian exceed the difference between fifty dollars and the per-pupil amount actually paid by the state, nor shall the amount the district of the pupil's residence is required to pay exceed the amount by which the per-pupil cost of maintaining the school attended is greater than fifty dollars. If, for any year, the amount collected from a pupil, parent or guardian exceeds the difference between fifty dollars and the per-pupil amount actually paid by the state, the excess shall be refunded as soon as the fact of an overcharge is ascertained."

In this case A, who resides in District B, is paying taxes on property which he owns in Warrenton.

Section 9207, R. S. Mo. 1929, provides:

> "The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district -- said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit

> forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: Provided, that the following children, if they be unable to pay tuition, shall have the privilege of attending school in any district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support: Provided further, 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."

The above section permits a credit to A on the amount charged for tuition to the extent of such school tax by virtue of paying a tax on property in Warrenton. Since District B is required under Section 16, supra, to pay tuition for A's children who attend Warrenton High School, as a matter of equity, the school district should be entitled to the credit due A under Section 9207, supra.

The court in the case of Davenport v. Timmonds, 138 S. W. 349, 157 Mo. App. 360, l. c. 365, in discussing the matter and theory of the right of subrogation, said:

> "Subrogation is based on rules of equity. It is a creation of the law whereby substantial justice may be accomplished, regardless of contract relation. In the recent case of Holland Banking Co. v. See, 130 S. W. 354, we had occasion to review the

authorities generally on the question of subrogation, and we made the following quotations:

"'Subrogation is a doctrine of equity jurisprudence. It does not depend on privity or contract, express or implied, except in so far as the known equity may be supposed to be imported into the transaction. It is a consequence which equity attaches to certain conditions. The parties may not have contracted for it either expressly or by legal implication, but if, in the performance of that contract which they did make, certain conditions have resulted which make it necessary for equity to interpose its authority in this respect it will do so, provided that in so doing it will violate no law and not alter the contract.'

"'The doctrine of subrogation has kept pace with the growth of the equitable principles until at the present time it exists in all its pristine vigor, and is extended to whomsoever as a matter of right and good conscience it should be applied.'

"'It is treated as the child of equity and is applied to secure a real and essential justice regardless of form, and independent of any privity of contract, or consideration between the parties affected by it.'

"'The doctrine of subrogation is not a fixed and inflexible rule of law and equity. It does not owe its origin to statute or custom. It is a creature of the equity courts, invented and applied by them to do justice or prevent an injustice being done in a particular case, and under a particular state of facts where the law is powerless in the premises.'"

From the foregoing, we are of the opinion that the facts and circumstances in this case make it one to which the principle of equitable lien or subrogation is specially applicable, and therefore School District B is entitled to a credit on the high school tuition for A's children in a sum equal to the amount of the school taxes paid by A in the City of Warrenton.

II.

In answer to your second question, we respectfully direct your attention to an opinion rendered you under date of October 30, 1934, a copy of which we are enclosing, wherein this department held that persons over twenty years of age are not entitled to gratuitous instruction. Hence School District C may refuse to pay tuition for students attending high school at Warrenton who are over the age of twenty years, even though they have as yet not completed their high school course. However, it is to be noted in the second part of the enclosed opinion that if the board wishes to provide gratuitous instruction for persons over the age of twenty years, it may do so just so long as it is not paid out of funds derived by virtue of Section 6, Article XI, of the Constitution of Missouri.

Yours very truly,

James L. HornBostel,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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