SCHOOLS:
REORGANIZED DISTRICTS: 1. Section 165.257, RSMo 1949, is applicable to every school district in Missouri not maintaining approved high school offering work through twelfth grade. 2. Pupil living in reorganized district does not have unrestricted right to attend high school in any other district. Right to attend school of choice subject to limitations of Section 165.257, RSMo 1949. 3. When reorganized district not maintaining high school provides transportation for resident pupils to approved high school of adjoining district and some of said pupils are provided transportation by another adjoining district to its high school, reorganized district is obligated to pay for transportation in excess of specified state aid to said other adjoining district.

May 19, 1960

FILED
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Honorable Hendrix H. McNabb, Jr.
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Sir:

This office is in receipt of your request for a legal opinion which reads as follows:

> "School District R-1X, Bates County, Missouri, is a re-organized school district under the provisions of Chapter 165 R.S. Mo. 1949. The district does not maintain a high school but does maintain its own transportation system. Shortly after organization, arrangements were made to transport high school pupils to the consolidated school in Appleton City, Missouri, which is an adjoining district, and paid the tuition and cost of transportation. Six of the approximately fifty-five high school students refused to attend the Appleton City School and insisted on going to Butler High School, another consolidated adjoining district. Both schools are approved. The six children in question have been riding the buses of the Butler system although the regular bus routes of District R-1X go immediately in front of each of their houses. The Butler district has made a claim for transportation expenses of such students.
>
> "Obviously, District R-1X, if obligated to pay such expenses will be subjected to considerable expense which would seem to be unnecessary, particularly in view of the fact that they could provide transportation for these students without extra cost on their own transportation system. If the district can be required to pay transportation as well as tuition expenses to any school in adjoining districts of the choice of the pupils or their

parents, it would seem to create the possibility of children changing schools for trivial reasons such as becoming disgruntled with an instructor or a course of study, so that the district's transportation system would become greatly disorganized and the district subjected to a terrific financial burden.

"Based on the above facts, your opinion is respectively requested on the following questions:

"1. Is a re-organized school district, which has no high school but maintains its own transportation system and has arranged its bus schedules so as to pick up each high school student at his door and transport him to an approved high school in an adjoining district, obligated to pay all transportation costs of another adjoining district if the student choses to attend the school at such adjoining district?

"2. Does a student living in a re-organized district have the unrestricted right to attend high school in any other district?

"3. Do the provisions of Section 165.257 RSMo 1949, which would appear to apply only to common school districts apply to re-organized school districts?"

Section 165.257, RSMo 1949, is referred to in the opinion request, and among other matters provides that a school district shall pay the tuition of its nonresident high school pupils. Said section reads as follows:

"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 fity 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. The cost of maintaining the school attended shall be determined by the board of such school district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, maintenance and replacements. Per pupil cost of the school attended shall be determined by dividing the cost of maintaining the school by the average daily pupil attendance. In case of any disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. 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, or 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 hereinbefore 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." (Underscoring ours.)

The above quoted section is found in that portion of Chapter 165 of the Revised Statutes of Missouri dealing with common school districts, and it unquestionably applies to such districts. The question as to whether the section, which appears to apply exclusively to common school districts, also applies to reorganized school districts, and as posed in the third inquiry herein, is quite another matter. Said question is believed to be of such vital importance that it must first be discussed and satisfactorily answered before attempting to discuss or answer the other inquiries of the opinion request. In view of this fact we believe it is necessary to discuss the third inquiry at this time.

The mere fact that Section 165.257 is found in that part of Chapter 165 of the statutes referring to common schools is not determinative or even persuasive that said section is exclusively applicable to such schools. Rather it is believed the provisions of the section, the intention and purpose of the lawmakers at the time of the enactment of same are matters of first consideration in construing the statute and determining its applicability to other than common school districts.

From the first underscored portion of Section 165.257, supra, we call attention to the words "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, * * * *"

It is readily seen that this language is very broad in meaning, and could, and we believe it does, refer not only to common schools but to others as well.

In the event the section applies to only common schools, then all others, regardless of the type, would be excluded from the operation of the section and the benefits therein provided. Unfortunately, in that situation, a pupil of another district would be unfairly discriminated against, since his residence would be in a district not liable for the payment of his tuition, consequently, the pupil, his parents, or guardian would be required to pay his tuition expenses. In many instances this would result in hardship to the pupil or his parents and such a procedure might even be the means of depriving him or countless others of the privilege of attending high school.

It is believed the Legislature was fully cognizant of the result that would necessarily follow in the event they enacted a law solely beneficial to common school districts, and their pupils. It is further believed that they had no intention of enacting such a law and that the one they did enact in the form of Section 165.257 offers equal educational opportunities to pupils of all school districts in the state.

A statutory rule of construction to be followed, and one having a particular significance is that school laws are to be liberally construed. This long established principle was reaffirmed by the court in the case of State v. Tillatson, 312 S.W.2d 753, at l.c. 757, which reads as follows:

> "[8] In considering the application of our school laws we must remember the repeated and universal expressions of our courts to the effect that they are to be interpreted liberally, and that substantial compliance with the statutes is sufficient, for generally these laws are administered by laymen. State ex rel. School District No. 34 v. Begeman 221 Mo. App. 257, 2 S.W.2d 110; State ex rel. Acom v. Hamlet, 363 Mo. 239, 250 S.W.2d 495; Reorganized District R-IV v. Williams, Mo. App., 289 S.W.2d 126; School District No. 16 v. New London School District, 181 Mo. App. 583, 164 S.W. 688; State ex inf. Mansur ex rel. Fowler v. McKown, 315 Mo. 1336, 290 S.W. 123."

If it had been the legislative intent the section was to apply to common school districts and to no others, then the lawmakers would undoubtedly have placed some such limitation therein, or else they would have employed language from which the unmistakable and necessary implication could be drawn that said section was intended to refer to common school districts alone.

In the absence of any such express provisions or necessary implication to be drawn from the express provisions, it cannot be said the statute refers only to common school districts, but that it refers to other types of districts including reorganized districts.

Therefore, in answer to the third inquiry, it is our thought the provisions of Section 165.257, RSMo 1949, are applicable to every

school district in Missouri not maintaining an approved high school offering work through the twelfth grade.

The second inquiry is whether a student living in a reorganized district has the unrestricted right to attend high school in any other district.

In this connection we call attention to a portion of Section 165.257 quoted above and which reads: "Subject to the limitations of this section, each pupil shall be free to attend the school of his or her choice."

This statutory authorization permits a pupil to choose any high school he or she may desire to attend and upon first thought grants an unlimited right of selection to the pupil. Upon closer scrutiny it is found that such is not the case. In effect, the section provides that the right of the pupil to choose a school shall be exercised only in accordance with, and subject to the limitations of that section.

In view of the foregoing, our answer to the second inquiry is that a student living in a reorganized district does not have the unrestricted right to attend high school in any other district, as the right to attend a school of his choice is subject to the limitations provided by Section 165.257, RSMo 1949.

The first inquiry reads as follows:

> "1. Is a re-organized school district which has no high school but maintains its own transportation system and has arranged its bus schedules so as to pick up each high school student at his door and transport him to an approved high school in an adjoining district, obligated to pay all transportation costs of another adjoining district if the student choses to attend the school at such adjoing district?"

In an opinion of this office written for Honorable Harry J. Mitchell, prosecuting attorney of Marion County, on June 19, 1953, the factual situation is similar to that involved in the present request. We enclose a copy of this opinion.

There the Palmyra school district and the Monroe City school district had been providing transportation for the high school pupils of a rural district. One of the questions considered was

whether or not the rural district was legally required to pay for the transportation of its high school pupils. Regarding said inquiry, it was concluded there was no requirement that either the receiving or sending district provide free transportation of pupils attending high school in a district different from their residence, but if such transportation is provided, the sending district is obligated to pay the cost of transportation in excess of the specified state aid, provided such obligation can be met with available funds and revenue realized through the maximum constitutional levy without voter approval.

We have previously given it as our opinion that R-1X district had the obligation of paying the tuition of all of its students who attended high school in another district under provisions of Section 165.257 and that subject to the provisions of that section the pupils were free to attend the school of their choice.

It is further believed, for reasons given in the Mitchell opinion, that although R-1X district was not required to provide free transportation of its pupils to attend high school in another district, or districts, yet when transportation was provided for said pupils by districts R-1X, and Butler, then the former district was obligated to pay for such transportation to the latter. However, the obligation of R-1X as sending district to pay transportation costs of its six pupils to Butler as receiving district, does not extend to the total amount of such transportation costs, but is limited and requires the payment only of an amount in excess of specified state aid.

CONCLUSION

Therefore, it is the opinion of this office that:

(1) The provisions of Section 165.257, RSMo 1949, are applicable to every school district in Missouri not maintaining an approved high school offering work through the twelfth grade.

(2) A pupil living in a reorganized school district does not have the unrestricted right to attend high school in any other district, as the right to attend the school of his choice is subject to the limitations provided by Section 165.257, RSMo 1949.

(3). When a reorganized school district not maintaining high school provides transportation for its resident pupils to an approved high school of an adjoining district and some of said pupils are provided transportation by another adjoining district, whose approved high school they choose to attend, said reorganized

Hendrix H. McNabb, Jr.

district is obligated to pay the cost of such transportation in excess of specified state aid.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

Enclosure (1) copy of
opinion to Harry J. Mitchell
6-19-53.

PNC:ls:w