SCHOOLS: Non-resident tuition.

2/23

February 22, 1934.

Hon. Sam M. McKay
Prosecuting Attorney
Jefferson County
De Soto, Missouri

Dear Mr. McKay:

This is to acknowledge your letter dated February 12, 1934, as follows:

> "I have had considerable complaint from persons living in rural communities who have children attending the High School here at De Soto. The School Board has been making the children, or their parents, pay tuition by the month, over and above the amount which the local School District in which they reside was liable. In other words, they divided the $50.00 supposed to have come from the State, by the months in the school term, and were charging them that monthly rate. In the event they did not pay, they were suspended and refused the grades they had made, etc.
>
> I secured a copy of your opinion, dated November 28th, 1933, given to the Prosecuting Attorney of Cole County, which, if I understand it correctly, holds that a non-resident pupil cannot be charged any sort of a fee that is not chargeable against a resident student.
>
> I wrote to State Superintendent Lee, making an inquiry as to what attitude his Department was taking in the matter, and I have received a letter from J. R. Scarborough, Director of High School Supervision, which I quote below:

'Section 9207, page 25, Revised School Laws 1931, states that boards of education may set up rules and regulations governing the admittance of non-resident students.

The law of 1931, Section 16, page 238, provided that the state would pay the tuition of non-resident students up to fifty dollars, and that the rural districts from which the students come would pay the tutition costs in excess of fifty dollars. This law does not prohibit the charging of a fee from the individual students.

I wish to call your attention to the fact that the state is now paying only about 25% of this fifty dollars, or $12.50, per pupil.

Let us assume that the pupil cost in De Soto is sixty dollars. I do not know what it is, but am assuming an arbitrary figure for the sake of illustration. The State is now paying only $12.50. The rural district from which the student comes would be liable for ten dollars per pupil. This would make a total of $22.50 which the De Soto school would receive for each non-resident student if no charge were made on the individual. I believe you will agree with me that the De Soto school could not afford to take non-resident students at this price when the per capita cost, under our assumption, is sixty dollars.

I am sorry that conditions in the State revenue have made it impossible for the state to meet its obligation, and as a result a large percentage of the high schools in the state are forced to charge fees or reject non-resident students. It would be much better if the 1931 law were financed in full and the individuals relieved of this burden. As much as I regret the necessity of charging fees, it seems that a high school board is acting within its legal rights when it charges these fees.

'If this Department can be of any help in this problem, I shall be glad to have you write me at any time.'

If I understamd this letter correctly, they are holding directly opposite to the view contained in your recent opinion.

I would appreciate it very much if you would, after reading their letter, let me have your instructions in the matter."

You are correct in stating that the letter you received from the Department of Education holds contrary to the opinions rendered by this office relative to tuition of non-resident students. You do not state that you have copies of these opinions and we are enclosing herewith same for your information.

Please be advised that this date a mandamus suit was filed in the Supreme Court with this question involved; the style of the case is State ex rel. Mildred Burnett et al., v. Jefferson City High School et al. The litigants, to hasten an early decision, entered stipulation which materially shortened the time allowed under the rules of the court, consequently, by April 15th we believe the court will have rendered its opinion settling this controversial point.

We are cognizant of the fact that the Board of Education has taken a contrary view from that expressed by this office. In fact, we have had conferences, as well as correspondence, over this controversy and we cannot help it if they see fit to substitute their own judgment in lieu of how we interpret the law. However, we do not recede from our first position and will only do so when the Supreme Court of Missouri determines the matter as in conflict to those promulgated by this Department.

We seldom discuss the equities involved in a controversy and only write our interpretation of the law as to what we think the Legislature intended and said. True, in many cases legislation has left individuals in unfortunate situations but this Department is powerless to remedy such a condition.

The Supreme Court of Missouri, en Banc, in the case of State ex inf. Mytton v. Rackliffe, 164 Mo. 453, l. c. 460, said the following on a similar question:

> "The courts have no power to reform legislation. As it comes from the hands of the Legislature so we must take it, good or bad, perfect or imperfect, and however much we may regret the unfortunate situation in which this legislation leaves cities of the second class in regard to one of the most important departments of municipal government, it is beyond our power to relieve it."

When the Supreme Court decides the case now pending this Department will no doubt have same digested and copies sent to all Prosecuting Attorneys; so, until that time we leave this matter without further comment or discussion.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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Encs.