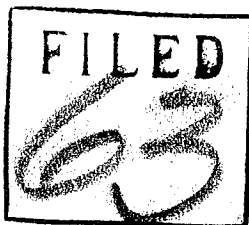


SCHOOLS: School district not having a high school is liable  
TUITION: for tuition, less fifty dollars, of student residing  
in said school district while attending high school  
in another district.



September 20, 1954

Honorable Richard D. Moore  
Prosecuting Attorney  
Howell County  
West Plains, Missouri

Dear Mr. Moore:

This will acknowledge receipt of your request for an opinion which for the sake of brevity we shall restate.

You inquire if, under the following facts, the Homeland School District is liable for said student's tuition during the last school year at West Plains High School:

There was no high school in said Homeland School District during the last school year. When this student started going to West Plains High School, his parents were residing in the Homeland School District in their own home. Thereafter, his father and mother left for Kansas City, Missouri, where the father found employment. Their son and student moved in with a neighbor in a different school district -- the Renfrow School District; however, both districts are located in Howell County, Missouri.

The intent being that said student would remain with his neighbor only so long as his father was employed in Kansas City, Missouri, the father's intention was not to move his household effects or his residence from said school district but went to Kansas City on a temporary basis only to obtain employment and remain there only so long as he might be

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employed, still retaining ownership of land and his home complete with his furnishings in said Homeland School District.

During the year, the father frequently returned to said school district, especially on weekends during November, at which time his son and student would live with his parents at home. After Christmas, the father returned to Kansas City for work and said student returned to the home of his neighbor. The student still continued on weekends to meet his parents at their home in Homeland School District. Shortly after the school year, the father returned to his home in Homeland School District and his son remained with him. Shortly thereafter, the whole family and student went to Kansas City for work. In August of this year the whole family returned to Homeland School District.

Such are the facts as related in your request.

We are enclosing a copy of an opinion rendered by this department under date of September 13, 1948 to Honorable Joe W. Collins, Prosecuting Attorney of Cedar County, Missouri, holding that a school district not maintaining a high school must pay the tuition of its pupils residing therein when attending high school in another district less an amount of fifty dollars to be paid by the state, and in case the state allotment does not amount to fifty dollars, then the pupil parent or guardian of said student is liable for the difference between the amount allotted by the state and fifty dollars.

The particular statute that was construed in said opinion was Section 10458, Mo. St. Ann., Laws of Missouri 1945, page 1557. This statute has been amended and now is known as Section 165.257 Missouri Revised Statutes Cumulative Supplement 1953. However, the statute, as amended, is still applicable and does not in any manner affect the conclusion reached in the foregoing opinion.

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Therefore, in view of the foregoing opinion, your request boils down to whether or not said pupil, during the last school year, was a resident of Homeland School District. If so, the said district is liable for the full tuition minus the fifty dollars state allotment, and if said pupil was not a resident of said school district, then the tuition is no obligation of said school district.

The word "resident" is used in many different statutes, and has been defined as used in some statutes; however, as used in statutes relating to school matters the Legislature has not given it a statutory definition.

In *Mansfield Twp. Bd. of Education v. State Board of Education*, 129 A. 765, 766, 101 N.J.L. 474, the court held that it is established that the permanent residence of a father is that of a child. However, a child who is brought into the state by the parent or guardian for purpose only of receiving education in the public schools of the state is not a resident of said state. In *Ptak v. Jameson*, 220 S.W. (2d) 592, 595, 215 Ark. 292, the court approvingly quoted from a case holding that the fact that a student had served in the Army and upon his discharge had entered the university under a GI Bill of Rights did not render him a resident of the city wherein said university was located. In order for him to become a resident of said city would require a bona fide intention to make the city his home for an indefinite period not limited to time necessary to obtain an education.

In the case of *State ex rel. v. Clymor*, 164 A. 671, 147 S.W. 1119, a case where the Springfield Court of Appeals had before it the meaning of the word "resident" as used in Section 10785, R.S. Mo. 1909, now Section 10340, R.S. Mo. 1939, a boy who was making his home with his grandfather in the town of Steelville, but whose father resided in the city of Springfield, was considered as not a resident of the Steelville School District. And, in the earlier case of *Binde v. Klinge*, 30 Mo. App. 285, a girl who was living with her grandmother in Hermann and whose father and other members of the family resided in Montgomery County, was considered as not a resident of the Hermann School District.

See also *Southeastern Greyhound Lines v. Conklin*, 196 S.W. 2d 961, 962, 303 Ky. 87, wherein the court held that residence indicates permanence of occupation as distinct from lodging or boarding, or temporary occupation; State

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ex rel. Webber v. Hathaway, 28 O.C.D. 481, 483, 22 Cir. Ct. R.N.S. 314, wherein the court held that residence of a person is the place where his habitation is fixed without any present intention of removing therefrom, and to which whenever he is absent he has all intentions of returning; and Johnson v. Haile, 199 N.Y. Sup. 875, 205 App. Div. 633, wherein the court held that a residence means a permanent residence, one's home as distinguished from a mere stopping place for transaction of business or pleasure.

From the foregoing definitions it would seem that a person of school age is a resident where the parents reside, for a minor is not in law considered as capable of establishing a residence except in exceptional circumstances.

Therefore, in view of the foregoing decisions construing the word "resident," we believe that under the facts stated herein the parents of said student were at all times during the last school year residents of Homeland School District, and likewise, said student was a resident of said school district. This being true, the Homeland School District would be liable under Section 165.257, supra, for the school tuition, less fifty dollars, for said student attending West Plains High School.

#### CONCLUSION

It is the opinion of this department that the parents of said pupil, under the foregoing decisions defining the word "resident," were during said school year at all times residents of Homeland School District, and by reason thereof their son and student referred to herein was a resident of the same school district and, therefore, said district is liable for the school tuition of their son and pupil while attending West Plains High School, minus the fifty dollars for the allotment allowed by law.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

Enc: Opn.  
Hon. Joe W. Collins  
9-13-48

ARH:sm, vlw