SCHOOLS: District of child's residence is liable for tuition, under Sec. 10458, R. S. Mo. 1939, but "residence" is a question of fact.

November 19, 1942

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Mr. N. L. Newton, Secretary
Board of Education
California, Missouri

Dear Sir:

We have your letter of recent date, in which you submit the following for an opinion:

> "Recently we had before our Board of Education, a question involving the responsibility for payment of tuition. We would like your opinion on the matter.
>
> "Briefly, the case is this. A non-resident student attended our school one month. This student was from District No. 41 and resided with his parents who lived in that district during the month. The parents of this student then moved to St. Louis and the student transferred his place of residence to District No. 25, where he is living with friends and plans to remain the rest of the school year. District No. 41 tendered us one month's tuition, claiming their responsibility ended when the student moved from their district into District No. 25, and that henceforth District No. 25 is responsible for the payment of the student's tuition.
>
> "Who, in your opinion, is responsible for the tuition due us?"

The facts stated in your letter are not sufficient to determine definitely the answer to your question. You will see from the law hereafter quoted that the circumstances and facts surrounding the present stay of the pupil in District No. 25 largely determine the answer to your question. However, we will undertake to outline the rules by which you may make the determination when you have all of the facts in your possession.

Section 10458, R. S. Missouri, 1939, reads in part 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; * * * * "

It will be observed that the only tuition for which a district is liable is the tuition of a pupil who is a resident of that district. From the facts set out in your letter, the pupil in question was a resident of District No. 41 for one month of the school year, and that district would consequently be liable for the tuition of such pupil for that period. However, there is nothing in your letter which would indicate that said pupil has since said first month been a resident of District No. 41. Neither the pupil nor his parents reside in said district, and consequently there would be no theory upon which it could be said that the pupil in question is now a resident of District No. 41. Since the pupil is not a resident of such district, the district would not be liable for his tuition.

If either of the districts in question is liable for the tuition of the pupil, it would be District No. 25. Whether said district is liable for such tuition will depend largely upon the facts surrounding the stay of such pupil in said district.

The determination of residence is always a troublesome problem. "Residence" is a flexible term, the meaning of which is to be determined from the context of the language wherein it is found.

In the case of State ex rel. v. Clymer, 164 Mo. App. 671, the court discussed at some length what constituted sufficient residence of a child within a school district which would entitle him to attend such school. The court pointed out that the policy of the state was to furnish free education for all children of school age, and that the construction of any statute regarding the requirements as to residence of such children should be liberally construed. In that case a child was residing in one district, while its parents did not reside there. In the course of the opinion the court, in referring to a former case, said, l. c. 677:

> " * * In passing on the case, Judge Thompson held the word 'resident' used in the statute, was to be distinquished from the word 'domicile,' and without the proviso in the statute, if the child had gone to live with the grandmother without any expectation of returning to its parental residence while the grandmother lived, or while the child remained unmarried, and not merely for the purpose of acquiring the privilege of a better school than existed at the domicile of the parent, she might be a resident of the grandmother's school district, although the father resided elsewhere. * * * * "

In the case being considered by the court in the foregoing case the child resided with his grandparents in one district, while the parents of the child resided at another

place in the state and in another school district. In discussing those facts, the court said, l. c. 678:

> " * * * The boy, to all intents and purposes, was a resident of the school district, although his domicile may have been at Springfield. He was living in the district as a member of the relator's family, and under an agreement made with his father by which the relator had agreed to take, care for, and educate him. It was not a contract made for the sole purpose of permitting him to attend the Steelville school. The grandparent was aged, and the boy had lived with him a part of the time for more than five years, and undoubtedly there existed between them a degree of affection perhaps equally as strong as that between father and son. The common experience of mankind proves the truth of this statement, and therefore, it needed the testimony of no witness to establish it. But the grandfather did testify that he liked the boy and wanted him to live with him, and it was satisfactory with the father and the son also. There is no claim that the contract was not made in good faith, or that it was not being strictly performed by all parties thereto. The fact that it was not in writing was a matter that the parties alone were concerned about, and no stranger could set it aside or take advantage of the failure to observe formality in its execution."

In the course of the opinion the Missouri court referred to and discussed cases from other states, and we believe that the opinion of the Missouri court laid down the rule that if a pupil were in a school district for the bona fide purpose of remaining there indefinitely, and not for the mere purpose of obtaining the benefits which might be

his by reason of being in that district, such child would be a "resident" of such district within the meaning of the school law. Whether such child is in the district under circumstances as would entitle him to be classed as a resident of that district for school purposes will have to be determined from the facts surrounding that particular child.

CONCLUSION

It is, therefore, the opinion of this office that a school district in which a child has been residing but from which it and also its parents have removed, is not liable under Section 10458, R. S. Missouri, 1939, for the tuition of such child.

Respectfully submitted

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APPROVED:

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