

SCHOOLS: Where pupils of a district not maintaining a high school attend high school in another district, under Sec. 10458, R. S. 1939, such district is legally obligated to pay tuition of such pupils even though they are orphans.

January 22, 1943



Mrs. Ada Reynolds
County Superintendent
Huntsville, Missouri

Dear Mrs. Reynolds:

We have your letter of the 20th, in which you submit the following request for an opinion:

"Will you please give me a ruling on the following:

A high school student from a rural school in Audrain County, whose mother is dead but whose father is living, is attending Clark High School in Randolph County.

The Audrain County school has refused to pay tuition, saying the boy is an orphan and entitled to attend any school in the state without paying tuition.

"As the Audrain County Superintendent and I have not agreed on the interpretation of the law, I felt it best to refer to you for settlement."

The question you submit evidently arises from different interpretations of Sections 10340 and 10458, R. S. Missouri, 1939. We shall, therefore, discuss these two sections.

Section 10340, in enumerating the powers of school boards, reads in part as follows:

" * * * 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, except as provided for in Section 10458, R. S. 1939; 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: * * * * "

This statute clearly provides that the school board of a district cannot require tuition of orphans or children with only one parent living, who are unable to pay tuition, before allowing such children to attend the schools of the district. It should be noted that said section authorizes the school board "to admit pupils not residents within the district." This could mean nothing else than allowing pupils not resident in the district to attend the school or schools of the district. Tuition is a fee charged by one school district to allow someone to attend school therein who is not entitled as a matter of right to attend such school. The law (Section 10340) has seen fit to allow orphans and children with only one parent living, who are unable to pay tuition, to attend the school of any district in which they have a permanent or temporary home. Such children might have a home within a district and yet not be legal residents of such district, but in line with the general policy of the state to diffuse education as freely as possible, this provision has been made to remove any question as to the right of such children to have the advantages of free public schools.

It should be observed that the children provided for in said section are not privileged to attend any school they choose without paying tuition, but are permitted to attend

only the school of the district in which they have a permanent or temporary home. The child involved in your case is not seeking to attend a school in the district in which he has a permanent or temporary home, but is seeking to attend (and is attending) a school of another district, that is, a school in a district in which he does not have a home. Therefore, the provisions of Section 10340 do not apply to him at all since he does not come within the class of children exempted from payment of tuition. So far as Section 10340 is concerned, the pupil you inquire about could be required to pay tuition to the Clark High School even though he were an orphan and unable to pay his own tuition.

However, the matter of tuition in the case you submit is governed by Section 10458 of the Statutes, which 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;

* * * *"

We assume that the pupil you inquire about has completed the highest grade offered in his home district and that such district does not maintain an approved high school offering work through the twelfth grade. Such child is, therefore, entitled to attend an approved high school in another district of Audrain County or of any adjoining county. Randolph County adjoins Audrain County, and hence the pupil can elect to attend Clark High School of Randolph County.

Said Section 10458 puts the liability for the tuition for such pupil on the district of his residence, to-wit, the Audrain County school. Nothing is said in said section about a district not being liable for the tuition of an orphan child or of any other child, but said section plainly says that the district shall "pay the tuition of each and every pupil resident therein" who attends the high school of some other district of the same or an adjoining county. This provision would clearly include the pupil you inquire about.

Said Section 10458 provides a complete scheme for tuition and its payment. The Supreme Court of this State has so held. In the case of State ex rel. v. School District, 335 Mo. 803, 74 S. W. (2d) 60, l. c. 33, the Supreme Court, in discussing this provision of the law, said:

"Now, although section 16 contains no express provision that a nonresident pupil shall not be required to pay tuition, it does provide a complete and apparently exclusive scheme for its payment. First, it unequivocally requires the district of residence to (*italics ours*) '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 where work of one or more higher grades is offered.' * * * * *

A complete scheme for the payment of the tuition of nonresident pupils thus having been provided, we cannot escape the conclusion that it was intended to be exclusive and that respondents are without power to charge tuition in any other way.

* * * * *

CONCLUSION

It is, therefore, the opinion of this office that a school district which does not maintain an approved high school offering work through the twelfth grade is legally obligated to 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 who attends an approved high school in another district of the same or an adjoining county, even though such pupil or pupils are orphans or have only one parent living.

Respectfully submitted

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APPROVED:

ROY MCKITTRICK
Attorney General

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