

SCHOOLS:

: Sending district where pupil resides must
: pay non-resident tuition under section
: 10458, R. S. Missouri, 1939. "Residence"
: is determined by facts in each particular
: case.

March 7, 1944



Mr. Lee Simkins, Superintendent
Braymer Public Schools
Braymer, Missouri

Dear Mr. Simkins:

This will acknowledge the receipt of your letter of February 15, 1944, wherein you request an opinion of this office. Omitting caption and signature, the text of your letter is as follows:

"We have a pupil attending our high school who is staying in a home of a non-relative living in a school district in Carroll county. The family of this pupil resides in a school district in Ray county.

"Because the parents of the pupil do not maintain a home in the Carroll county district, that district feels no obligation to pay the \$30.00 tuition fee assessed against the sending district for non-resident pupils attending the Braymer public high school.

"We contacted the clerk of the Ray county district in which the parents of the pupil reside. She maintains, that although the parents of the pupil live in the Ray county district, the pupil does not live there, and, therefore, the district is not obligated to pay the tuition fee we assess sending districts.

"Since our per pupil costs are exceedingly high this year, we are anxious to collect all fees due the district. Our purpose in writing you is to obtain your opinion as to the district legally obligated in the case given above."

Your letter does not contain enough facts for a complete and definite answer to your question.

The circumstances and facts relating to the stay of the pupil in Carroll County are the factors which determine the matter. However, we are undertaking to outline the rules by which you can make the determination when you have all 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. The determination of "residence" within the school district presents difficulties and may be said to be largely determined by the facts in each case.

In *Barnard School District v. Matherly*, 84 Mo. App. 141, it is stated, "In our opinion to entitle one to school privileges for his children in the public schools, he must bona fide reside within the school district. Coming temporarily within the district to reside during the scholastic year, for the purpose of sending a child to the school of that district can not be allowed.

It may be stated as a general rule that ordinarily the domicile of the parents is the domicile of the minor children.

Lacy v. Williams, 27 Mo. 280
Lewis v. Castello, 17 Mo. App. 593.

However, the courts have held that domicile and residence are not always synonymous, and that a person may have a legal domicile in one place and a temporary residence in another. The fact that the parent was not residing with the child would not necessarily prevent the child from being a resident of another school district within the meaning of the statute. It would depend on the particular facts and circumstances surrounding that residence. The general rule being 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 may 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.

School District v. Matherly, supra
State ex rel. v. Clymer, 164 Mo. App. 671.

In State v. Clymer, the child was living with his grandfather and the court held him to be a "resident" within the meaning of the law even though the parents did not reside there. In Binde v. Klinge, 30 Mo. App. 285, it was held that if a child had gone to live with its grandmother without any expectation of returning to its parental residence while the grandmother lived and not merely for the purpose of acquiring the privilege of a better school than existed at the domicile of the parents she might be a resident of the grandmother's school district, although the father resided elsewhere.

In McNish v. State ex rel. 104 N. W. 186, a cousin of the child's mother took the child to live with her in Nebraska when the mother died. The father lived in Iowa. The court held that the cousin stood in loco parentis and the child was entitled to free tuition under the Nebraska law.

Mr. Lee Simkins

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CONCLUSION.

It is therefore the conclusion of this office that the liability of a school district to pay non-resident tuition under section 10458 R. S. Missouri, 1939, depends on whether the pupil is a resident of that district. "Residence" is determined by the particular facts surrounding each child with the general rule that if a pupil is in a school district for the bona fide purpose of remaining there indefinitely, and not for the mere purpose of obtaining the school benefits.

Respectfully submitted

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APPROVED:

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