

TUITION: Discretionary with board of directors of school district whether or not nonresident pupils shall
SCHOOLS: be admitted. Board of directors of school district may prescribe tuition for nonresident pupils and refuse admission if tuition is not paid.

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95

Honorable Wm. H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"I have a problem confronting Reorganized School District R-3, Gasconade County, Missouri.

"This School District, Bland, Mo., Consolidated District adjoins Belle, Missouri, School District, which is in Osage County, Missouri.

"Belle and Bland, that is both districts, have the same facilities, that is grade school and four year high school. However some in the Belle district are sending their students to the Grade School in Bland, that is R-3.

"Here are the two questions I would like answered.

"1. Must the Board in the Bland District, that is, R-3 permit the students from the adjoining county and district, that is the Belle District, attend their school, that is, R-3?

"2. Can the Board in R-3 set a tuition fee for these students attending from the adjoining county, Belle District, and if said tuition is not paid, then refuse admission?"

Honorable Wm. H. Wessel

Generally, the questions which you have submitted relate to pupils attending school in a district other than in which they reside and the right of the school district wherein the nonresident pupils attend school to require a tuition fee and refuse admission for nonpayment of same.

Your attention is directed to Section 163.010, R.S. Mo. 1949 (Section 10340, R.S. Mo. 1939), which provides as follows:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district - said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and 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 165.257; 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; provided further, that any person paying a school tax in any other district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax." (Emphasis ours.)

In the above statute reference is made to Section 165.257, which is the statute providing for the sending of pupils to high schools in districts other than in which they reside, where their own district does not maintain an approved high school, and the payment of tuition for said pupils.

Honorable Wm. H. Wessel

In reading your request it appears that you are concerned with the problem of grade school pupils attending school in a school district other than where they reside.

Section 163.010, supra, provides that the board of directors of a school district may admit pupils who do not reside within the district and prescribe the tuition fee to be paid. Following this provision an exception is provided whereby certain types of children may attend school in a school district wherein they may have a permanent or temporary home without paying any tuition. The statute then provides that a person has the right to send his children to school in a district other than where he resides, provided said person is paying a school tax in the receiving district. However, it does not appear in your letter that the school children to which you refer fall within the exception as set out in the statute, nor do their parents pay any school tax in the school district where they are sending their children, i.e., the Bland District.

Therefore, in answer to your first question we believe that it is discretionary with the board of directors of the school district whether or not nonresident grade school pupils from another school district, whose parents pay no school tax in what would be the receiving district, shall be admitted to attend school in the receiving district.

In answer to your second question, Section 163.010, supra, clearly provides that the board of directors of a school district in admitting nonresident pupils has the right to "prescribe the tuition fee to be paid by the same." We believe that where such tuition is set by the board of directors of the school district that the board has the right to refuse admission to nonresident pupils if tuition is not paid.

In the case of *Binde v. Klinge*, 30 Mo. App. 285, an action was brought to restrain the directors of the school district of the town of Hermann, in Gasconade County, from refusing a girl the privilege of attending the public school within said school district without paying the tuition as a nonresident pupil. The girl was living with her grandmother in the town of Hermann, and her father was living in Montgomery County. In deciding the question the court, at l.c. 286, 287, 288, said:

Honorable Wm. H. Wessel

" * * * Several interesting questions arise upon the record, which we think it unnecessary to consider, because we have come to the conclusion that upon an interpretation of section 7045, Revised Statutes, as amended by the act of March 28, 1885 (Laws of 1885, p. 240), the child Paula was not, under the undisputed evidence, entitled to attend the school without the payment of tuition as a non-resident pupil. The statute, as amended, reads as follows: 'The board shall have power to make all needful rules and regulations for the organization, grading, and government in their school district; * * * and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: * * *

* * * * *

" * * * Section 7049, Revised Statutes, provides for an enumeration of children 'resident in the district'; and the section above quoted, which governs the question before us, empowers the directors to admit pupils 'not residents within the district and prescribe the tuition fee to be paid for the same.' In view of the use of the word 'resident' in the statute, if the statute stood as it was before the amendment of 1885, we should have considerable difficulty in saying that a child, who has come to live permanently with its grandmother without any expectation of returning to its parental residence while the grandmother lives or while the child, being a female, remains unmarried, and who has not been sent there merely for the purpose of acquiring the privileges of a better school than exists at her actual domicile, is not a 'resident' of such school district, although her father may reside elsewhere in the state with the remaining portion of his family, as in this case. But the act of 1885, as above seen, adds a proviso extending the privilege of attending school to a certain class of non-residents in the following language: 'That

Honorable Wm. H. Wessel

orphan children, or any children bound as apprentices, shall have the privilege of attending school in any district in the state of Missouri in which they may find a permanent or temporary home, without paying a tuition fee.' By thus admitting to the privilege of attending school without the payment of tuition a class of non-residents whose claim to be regarded as residents, on general principles, is stronger than that of the child here in question, the legislature necessarily exclude the idea that other non-resident children are entitled to the privilege. This proviso to the statute seems to determine the question against the plaintiff, in conformity with the maxim, expressio unius exclusio alterius. As the child Paula is neither an orphan nor bound as an apprentice, it seems that she is excluded from the privilege of attending the school at Hermann without the payment of tuition, by this amendatory proviso, which must be regarded as a legislative interpretation of the whole statute."

The above case has been followed in the more recent case of Cape Girardeau School Dist. No. 63 v. Frye, 225 S.W. (2d) 484, which involved an action by a school district to recover tuition from the parents of nonresident pupils residing in another county who sent their children to the plaintiff school district. In construing Section 10340, R.S. Mo. 1939, which is the same as Section 163.010, supra, the court, at l.c. 488, 489, said:

" * * * We have already pointed out that Section 10340 empowers the board to admit pupils not resident within the district and to prescribe the tuition fee which such pupils must pay. The section then goes on to provide that certain classes of children may attend without the payment of tuition; and by thus limiting the privilege to certain definitely specified classes, it necessarily excludes the idea that other nonresident children are entitled to the privilege. Binde v. Klinge, supra. * * *"

Honorable Wm. H. Wessel

In view of the foregoing authorities your second question is answered in the affirmative.

CONCLUSION

It is therefore the opinion of this department that it is discretionary with the board of directors of a school district whether or not nonresident grade school pupils from another school district shall be admitted to attend school in what would be the receiving school district.

It is also the opinion of this department that the board of directors of a receiving school district wherein a tuition fee has been set to be paid by nonresident pupils has the right to refuse admission of nonresident pupils to the school in said receiving district, if said tuition is not paid.

Respectfully submitted,

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APPROVED:

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