

SCHOOLS: Orphan children permitted to attend school in any district in which such have a temporary or permanent home and are unable to pay tuition fees.

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Miss May Bowlin
Superintendent
Cass County Public Schools
Harrisonville, Missouri

Dear Miss Bowlin:

This is to acknowledge your letter as follows:

"I shall appreciate having your advice on the following circumstance which has been brought to my attention recently:

"A mother whose daughter is teaching in one of our rural schools left her own home district in another part of the county and went to live in the district where her daughter is teaching. The two have rented a room in a home in this district and are doing light housekeeping. A few weeks ago the mother took four orphan children from the Spofford Home in Kansas City and placed three of these children in the daughter's rural school and the other one in the nearest high school. The Spofford Home pays the mother for keeping the four children. Does she have a legal right to place these children in this rural district where she, herself, is

in a temporary home? Since the Spofford Home pays her for keeping the children, would they be wards of the Home and the Home be responsible for the tuition in both the rural district and the high school district? In other words, does this rural school have to school the three children who are attending in the home district and pay the tuition charged by the high school district which the older child is attending?

"I have never had a case of this kind brought to my attention before. I know that an orphan child can attend school in any school district where he or she may have a permanent or a temporary home but the fact that this woman has only a temporary home in the district herself, and that the Spofford Home pays her for keeping the children, brings up a point of law which I prefer your opinion upon."

Section 9207, R. S. No. 1929, provides in part 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shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner.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 * * * * and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: 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: * *"

The above statute is not ambiguous and plainly provides that orphan children have a privilege of attending school in any district in which they have a permanent or temporary home, and if unable to pay tuition.

The answer to your question, then, would be only a matter of applying the facts to the statute. The statute is for the benefit of the children and it is their temporary or permanent home that gives them the right to attend school and not the home of the person with whom they might be residing or living. It might be that the person who is being paid for the keeping of the orphan children is not a resident of the district. However, if said orphan children have a temporary or a permanent home with said person, then, in our opinion, said orphan children would have the right to attend school.

In State ex rel. v. Clymer, 164 Mo. App. 671, the Springfield Court of Appeals said the following (page 676):

"The policy of this state is to educate, and to furnish free of charge, good schools for all children of school age, and even to compel the attendance of children thereto. * * * As said by the Supreme Court of Wisconsin in State v. Thayer, 41 N. W. 1014: 'Such children are the wards of the state, to the extent of providing for their education to that degree that they can care for themselves and act the part of intelligent citizens. To secure these ends, laws relating to public schools must be interpreted

to accord with this dominant, controlling spirit and purpose in their enactment, rather than in the narrower spirit of their possible relations to questions of pauperism and administration of estates.'

"While the statute must be liberally construed, we also recognize the fact that it would not be right to permit children living in districts whose taxpayers have neglected or refused to maintain schools to have the benefits free of charge of schools in districts wherein the taxpayers have burdened themselves to erect school houses, employ competent teachers and maintain schools. * * *

"Prior to 1885, the statute contained none of its present provisos, but simply authorized the board to admit non-resident pupils within the district, and to prescribe the tuition fee to be paid. In 1885 it was amended by adding the proviso: 'That 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.'

"While the statute was in this language, the case of Binde v. Klings, supra, was decided by the St. Louis Court of Appeals. * * * * * The court held, however, that the proviso limited the general language, and only permitted orphan children, or children bound as apprentices, to attend schools

in districts where they had a permanent or temporary home without paying tuition fees, and said that by admitting certain non-residents the Legislature necessarily excluded the idea that other non-residents were entitled to the privilege."

However, the present statute contains four exemptions or provisos to the general rule as to the right of the board to admit non-residents and prescribe tuition fees.

In *School District v. Matherly*, 84 Mo. App. 140, the Kansas City Court of Appeals, page 142, said:

"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 children to the school of that district can not be allowed. If this defendant has such right, then all other citizens of Nodaway county, outside of Barnard, have, of course, the same right. The result would, therefore, be that that district could be called upon to support schools for the benefit of other distinct communities. This was not contemplated by the statute."

However, the facts presented in your inquiry show that the children seeking to go to school are orphan children, and if said orphan children have a temporary or permanent home in the school district and are unable to pay tuition, then, in our opinion, said children would have a right to attend school without payment of tuition.

Miss May Bowlin

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On the contrary, if said orphan children do not have a permanent or temporary home in the district, then of course said children cannot take advantage of Section 9207, supra. In this connection it is our further opinion that the temporary home must be bona fide and not for the mere purpose of giving the children a home in a district temporarily and during the scholastic year.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

JLH:EG