

MISSOURI SCHOOL FOR THE BLIND: Resident defined.

April 22, 1942

X-78

Hon. R. Wilson Brown, Superintendent
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri

FILE
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Dear Mr. Brown:

Under date of April 9, 1942, you wrote this office requesting an opinion as follows:

"We have in this school a student by the name of Renard Farrar, negro, age 18, who is the son of Mr. William Farrar of Kennett, Missouri; mother, Mrs. Tresia Farrar of Chicago, Illinois. The parents are separated. The mother is currently supporting the child and keeps him with her in Chicago during school vacations.

"The question we place before you is whether or not this child is considered a resident of the State of Missouri and whether or not he should be re-enrolled in this school for the coming school year."

Section 10853 Article 25, Chapter 72, R. S. Mo. 1939, declares what persons may attend the Missouri School for the Blind, and is as follows:

"All blind and deaf persons under twenty-one (21) years of age, of suitable mental and physical capacity, who are residents of this state, shall be entitled to admission to the school for the blind and the school for the deaf, respectively. All admissions and discharges, and the length of the period of instruction of

each pupil, shall be determined by the board of managers."

By this section it is required that a person attending must be a resident of Missouri.

At this point it is desired to call your attention to what is said about the word "resident" in Corpus Juris, volume 54, page 712:

"Although there are many definitions to be found in the books, it is not easy to give a satisfactory definition of this term, for it is a flexible, somewhat ambiguous word, used in many and various senses, with the sense in which it should be used controlled by reference to the object, thus having different meanings according to the context, or the subject-matter under discussion. It has a great variety of meanings. It is difficult to give an exact definition of what is meant by 'resident' as used in particular statutes, for, although often construed by the courts, the term has no technical meaning, but is differently construed in courts of justice, according to the purposes for which inquiry is made into the meaning of the term. The construction is generally governed by the connection in which the word is used, and the meaning is to be determined from the facts and circumstances taken together in each particular case."

The first matter to be considered in connection with your question is what is the meaning of the word "resident" as used in Section 10853, supra. In Webster's New International Dictionary, second edition, the word is defined as follows:

"resident, n. l. One who resides in a place; one who dwells in a place for a period of more or less duration. Resident usually implies more or less permanence of abode, but is often distinguished from inhabitant as not implying as great fixity or permanency of abode."

The word "resident" is used in many different statutes and in some of its uses it has been defined but in the case we are considering it is used in a section of the statutes relating to schools and we fail to find where the word has been defined as used in this statute. In defining the word it is our duty to construe the statute liberally in order to open the doors of the schools to the children of the state and not to close them. State ex rel. Halbert v. Clymer, 164 Mo. App. 671.

In the case of State ex rel. v. Clymer, supra, a case where the Springfield Court of Appeals had before it the meaning of the word "resident" as used in Section 10785, R. S. Mo. 1909, now Section 10340, R. S. Mo. 1939, a boy who was making his home with his grandfather in the town of Steelville, but whose father resided in the City of Springfield, was considered as not a resident of the Steelville School District. And, in the earlier case of Binde v. Klinge, 30 Mo. App. 285, a girl who was living with her grandmother in Hermann and whose father and other members of the family resided in Montgomery County, was considered as not a resident of the Hermann School District.

From the foregoing it would seem that under the general school law a person of school age is a resident where the parents reside, for a minor is not in law considered as capable of establishing a residence except in exceptional circumstances.

Both of the cases mentioned above related to a school district while we are considering the Missouri School for the Blind which is for the blind children for the entire state. However, it is felt the same rule should apply and that "resident" as used in Section 10853, supra, would be a person whose parent or parents had a place of residence within the State.

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Your letter states that the father of Renard Farrar resides in Dunklin County, Missouri, and that the mother is currently supporting the child and keeps him with her in Chicago during school vacations.

Section 1526, Article 3, Chapter 8, R. S. Mo., 1939, provides for the custody and control of minor children where the father and mother are living apart. Said section reads as follows:

"The father and mother living apart are entitled to an adjudication of the circuit court as to their powers, rights and duties in respect to the custody and control and the services and earnings and management of the property of their unmarried minor children without any preference as between the said father and mother, and neither the father nor the mother has any right paramount to that of the other in respect to the custody and control or the services and earnings or of the management of the property of their said unmarried minor children, pending such adjudication the father or mother who actually has the custody and control of said unmarried minor children shall have the sole right to the custody and control and to the services and earnings and to the management of the property of said unmarried minor children."

(Underscoring ours.)

CONCLUSION

From these last two sections, the rights of the parents being equal, it would seem the son would be a resident where the parent with whom he makes his home has his or her residence.

However, if there has been an adjudication as to the custody by a court of competent jurisdiction, the boy would be a resident of the place where the parent to whom custody was awarded had his or her place of residence.

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However, this office cannot determine whether or not the child should be re-enrolled for the coming school year for that is the province of the board of managers, since Section 10853, supra, provides:

"* * * * All admissions and discharges, and the length of the period of instruction of each pupil, shall be determined by the board of managers."

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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