

SCHOOLS:
COUNTY SUPERINTENDENT:
SCHOOL DISTRICTS:
COOPERATIVE AGREEMENTS:

1) A county superintendent does not have authority under Section 167.121, RSMo Supp. 1965, to assign a pupil from a district in the State of Missouri to attend a school district of another state.

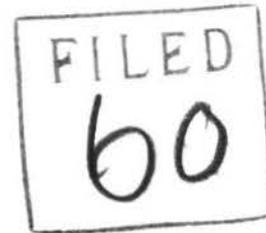
2) The board of education of a Missouri public school district may contract with the school district and officials in another state for the providing of instructional services to pupils resident of the Missouri district where the schools of the other state

are more accessible to the pupil so long as the contract does not delegate or surrender governmental functions and duties which are inherently vested in the Missouri public school board.

OPINION NO. 60
442 (1966)

September 21, 1967

Honorable Bernard W. Gorman
Prosecuting Attorney
Atchison County
Rockport, Missouri



Dear Mr. Gorman:

This official opinion is issued in response to your request for a ruling on the following question: May the county superintendent of Atchison County, Missouri, under Section 167.121, RSMo Supp. 1965, assign students to attend a public school in the State of Iowa on the basis that the Iowa school is "more accessible"?

Sections 167.131 and 167.141, RSMo Supp. 1965, expressly provide for Missouri school districts without high schools to send resident high school pupils to a school in an adjoining county of another state and pay their tuition. Since you inquire about assignment under Section 167.121 we assume that the pupils here are not within Sections 167.131 and 167.141.

Section 167.121, RSMo Supp. 1965, provides as follows:

"If any pupil is so located that a school in another district is more accessible, the county superintendent shall assign the pupil to the other district. If it is deemed advisable to assign a pupil to an adjoining county or if a common school district is divided by a county line, then the county superintendent of the county wherein the pupil resides shall make the

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assignment. If a six-director district is divided by a county line, the county superintendent of the county to which the district in which the pupil resides is assigned shall make the assignment. An assignment of a pupil is subject to an appeal to the state board of education by any county superintendent whose county is affected, and the decision of the state board of education is final. The board of directors of the district in which the pupil lives shall pay the tuition of the pupil assigned. The tuition shall not exceed the pro rata cost of instruction."

This statute authorizes assignment of pupils of one district to another. When the legislature used the term "district" in this statute, it clearly meant a district of the State of Missouri and not a public school district of another state. This meaning we believe to be evident from the terms of the whole statute. Furthermore, this statute governs the right of the district receiving the pupil as well as the district in which the pupil resides. Obviously the legislature of the State of Missouri has no control over the authority or duties of school districts in the State of Iowa.

Therefore, we are of the opinion that the county superintendent does not have authority under Section 167.121 to assign a pupil from a school district in the State of Missouri to attend school in a school district in the State of Iowa.

However, the foregoing conclusion does not preclude a Missouri pupil from attending school in the State of Iowa.

There is no requirement of Missouri law that a pupil attend a Missouri school, public or private. A child resident of Missouri so long as he complies with the compulsory attendance laws, Section 167.031, et seq., RSMo Supp. 1965, may attend any school within or without this state. However, the cost of the pupil's education can be paid out of public funds only when authorized by law.

Article VI, Section 16, Missouri Constitution, 1945, provides as follows:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Section 70.220, RSMo, 1959, provides as follows:

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"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides."

Section 70.210 defines political subdivisions to include school districts. Under Section 70.220 a school district of Missouri may contract with school districts and officials of the State of Iowa for the operation of a common public facility or service which is within the scope of the powers of the contracting parties.

This office has previously considered this statute and approved agreements providing for such things as the collection of taxes (Opinion 230, Holman, 3-29-66); the cooperative erection of hospitals, (Opinion 63, Moore, 3-27-57); and common police protection (Opinion 258, Avery, 11-4-63).

The power to enter into cooperative agreement is not unlimited. The subject and purposes of the contact must be within the scope of the powers of the cooperating subdivisions. Here we are dealing with the education of children resident of the school district. Clearly the Missouri school district has the authority to provide for the education of these children. The authority of school districts and officials of the State of Iowa is, of course, a matter of Iowa law and we express no opinion, but shall assume for the purposes of this discussion that the Iowa school district has authority to enter into an agreement with a Missouri school district and that the subject of the agreement would be within the scope of powers of the Iowa school district.

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Cooperative agreements under Section 70.220 are further limited by the rule that public corporations may not surrender or delegate to others their governmental powers. C.J.S., Municipal Corporations, Sections 139, 154, 1007. This office has held that Article VI, Section 16, Missouri Constitution of 1945, quoted supra, does not authorize one municipality to contract with another for municipal-judicial services for the reason that this is a non-delegable, sovereign governmental function.

The question of what functions of a public corporation may be performed by contract requires detailed consideration of each particular situation. It is a question that can be resolved only in regards to a specific case. Therefore, the holding of this opinion should be considered to apply only to the situation where a school district of Missouri contracts with a school district of another state to provide educational services to a resident of the Missouri district and not be considered as applicable to any other situation. We rule today on this situation and no other.

We are of the opinion that, where there is a need and where contracted services would be educationally sound and not inconsistent with the governmental responsibilities of a public school board, a school district of Missouri may contract with a school district of another state to provide educational services to residents of the Missouri district.

The contract should be strictly limited to the providing of instruction and other ministerial type activities. The contract should reserve to the school board of the Missouri district all governmental functions which are the non-delegable responsibility of the board. The contract would not relieve the board of its responsibility to see that adequate education is provided to resident pupils and to make such decisions as are vested by law in the board.

CONCLUSION

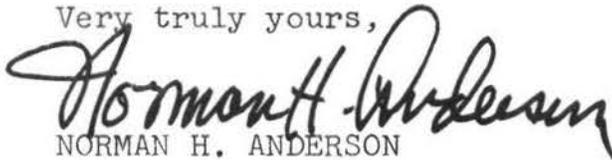
Therefore, it is the opinion of this office that:

- 1) A county superintendent does not have authority under Section 167.121, RSMo Supp. 1965, to assign a pupil from a district in the State of Missouri to attend a school district of another state.
- 2) The board of education of a Missouri public school district may contract with the school district and officials in another state for the providing of instructional services to pupils resident of the Missouri district where the schools of the other state are more accessible to the pupil so long as the contract does not delegate or surrender governmental functions and duties which are inherently vested in the Missouri public school board.

Honorable Bernard W. Gorman

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Louis C. DeFeo, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General

Enclosures: Opinion 230, Holman, 3-29-66
Opinion 63, Moore, 3-27-57
Opinion 258, Avery, 11-4-63