

SCHOOLS:

No resident pupil or parents do not have to pay tuition or other fees to attend high school, if the

subject receives state aid.

May 25, 1934.



Hon. Walter M. Hilbert
Prosecuting Attorney
Lewis County
Monticello, Missouri

Dear Mr. Hilbert:

On May 7th, 1934, you wrote this office as follows:

"Please give me an opinion on the following state of facts and the law applicable.

The city High School at Canton, Missouri, has established the tuition for non-resident pupils at \$60.00 per year which they claim is the actual per capita cost of instruction in this school. Pupils from an outlying country district attended Canton High School the school term of 1933-1934. The district in which the pupils resided paid to Canton High School the sum of \$10.00 per pupil for the instruction received by their pupils. The state allotment was less than the \$50.00 remaining due the Canton School as tuition on each pupil in question.

Are the parents of the pupils in question or the School District in which the pupils reside or both the parents and district liable for the difference between the amount actually paid by the state and the sum of \$50.00."

To which, on May 17th, we advised that there was pending before the Supreme Court of Missouri the case of State ex rel., Mildred Burnett, Relator, v. School District of City of Jefferson et al., Respondents, in which the identical question you requested an opinion concerning was before the court, and our refusal to further express our views because of its status.

The Supreme Court of Missouri, en Banc, on this date rendered its decision in the above case ordering that its peremptory writ of mandamus issue against the respondents, and in its opinion held that a school district receiving and accepting state aid could not charge non-resident pupils any tuition, whether in the form or guise of an incidental fee or otherwise.

State ex rel. Mildred Burnett, Relator, v. School District of City of Jefferson et al., Respondents, No. 33454 (Not yet reported) was "an original proceeding by mandamus to compel the School District of the City of Jefferson and its officers to admit Mildred Burnett as a pupil in respondents' high school without the payment of tuition by her or her parents."

The court in its opinion stated that relator was a minor between the ages of six and twenty years; was a resident of a common school district which maintained no high school or classes beyond the eighth grade; that she completed the course of study provided in her district and was fitted in every way to enter and pursue the course of study provided in respondents' high school; that the high school maintained by respondents was in an adjoining county and the most convenient for relator to attend; that respondents excluded relator because she or her parents failed to pay a \$3.00 per month incidental fee.

The court in its opinion said:

"The controversy in this case hinges upon the meaning and constitutionality of section 16. As enacted in 1931 (Laws of Missouri, 1931, pp. 343, 344) this section

is as follows: (Then the court here quoted Section 16)

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"Counsel for respondents contend that under the law the Jefferson City School District may admit non-resident pupils and prescribe a reasonable tuition fee to be paid by them. It appears from the pleadings that respondents, proceeding on this theory, when advised that under the appropriation made by the General Assembly for the school year 1933-34 the amount received per non-resident pupil would be approximately \$12.50 instead of \$50.00, levied an assessment of \$3.00 per month on each non-resident pupil in lieu of the deficit of approximately \$37.50 in the state's appropriation.

"The above contention is based on the view that the provision in section 9207 R. S. 1929, that a school board 'may admit pupils not resident within the district, and prescribe the tuition fee to be paid by the same', applies to respondent school district notwithstanding the subsequent enactment of Section 16, supra.

"It may be here observed that for the purposes of this proceeding the three dollar charge designated by the board as an 'incidental fee' should be regarded as a tuition fee. It was to be paid by each non-resident pupil as a condition precedent to admittance, and counsel necessarily treat the charge as tuition when they seek to defend the order by invoking the above quoted provision of section 9207.

* * * * *

"However, the act of 1931, of which section 16 is a part, still in furtherance of the same mandate 'made quite a change in the

method of distributing the state school funds'. (State ex rel. Dist. of Kansas City v. Lee, (Mo. Sup.) 66 S. W. (2d) 521, 522). Equalization and teacher and attendance aids were substituted for certain aids provided in the old law. (Sec. 13 of the act of 1931, Laws of Missouri, 1931, p. 340). Other and additional forms of state support were provided by the new law, and it appears from the pleadings herein that respondent district is receiving state support. Moreover, section 16 of the new act provided a complete scheme for payment of the tuition of qualified non-resident pupils, carrying with it the plain implication that such pupils should be admitted by school districts receiving state support and that tuition should not be charged therefor except as provided in the act. If under the old law, which afforded less state support, the General Assembly saw fit to limit the power given school boards under section 9207, R. S. 1929, by compelling the admittance of non-resident pupils by districts receiving such support, it is unreasonable to suppose that larger state support would be given with the intention of imposing no limitation whatever upon this power. The legislative plan to further state-wide 'gratuitous instruction' by the coordination of state agencies would come to naught if districts could avail themselves of state support and at the same time refuse to admit non-resident pupils coming within the purview of the plan or ignore the provision therein for payment of their tuition.

* * * * *

"A complete scheme for the payment of the tuition of non-resident pupils thus having been provided in the new law cannot escape the conclusion that it was intended to be exclusive, and that by accepting state support

respondents must be deemed to have surrendered the power to charge tuition in any other way. (underscoring ours) With respect to admittance of non-resident pupils and payment of their tuition the provisions of old section 9207 and the new law are inconsistent and the latter must prevail.

"The above interpretation is in harmony with above mentioned Section 1, Article XI, of the Constitution of Missouri, * * * State agencies set up to accomplish this high purpose are necessarily coordinated to that end, and legislation designed to distribute the burden and promote the efficiency of 'gratuitous instruction' among the various subdivisions of the state should be liberally construed in furtherance thereof. * * * * *

The court then took up the constitutionality of the questions raised by respondents, holding that Section 16 did not violate Section 1, 14th Amendment of the Constitution of the United States, and Article 2, Section 30 of the Constitution of Missouri, saying:

"* * * * * Compliance therewith is merely a condition precedent to state support which the district may avoid by failing to apply for and receive such support. Acceptance of the plan being voluntary on the part of such district its operation can not be regarded as a taking of property without due process of law."

The court also held that Section 16 was not violative of Section 3, Article X, of the Constitution of Missouri, which provides, "Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying

the tax, and all taxes shall be levied and collected by general law."; having this to say:

"Under the act of 1931 no funds derived from taxation are to be paid over to the qualified non-resident attending pupils or used for their support. Such funds are to be used only for the purpose of affording them 'gratuitous instruction', which is strictly a public purpose. The objection appears to be without merit and it is overruled."

The court further ruled that the title to the new law of 1931 did not violate Section 28, Article IV, Constitution of Missouri, in that it contained more than one subject and subjects not clearly expressed therein, citing the case of State ex rel. School District of Kansas City v. Lee, 66 S. W. (2d) 521 (Mo. Sup.), saying:

"This question as to the constitutionality of the act is also ruled against respondents.

"For the reasons above stated peremptory writ of mandamus should issue against respondents, and it is so ordered."

The opinion was written by Honorable Frank E. Atwood, Judge, and was concurred in by all the Judges, except Judge Ellison, absent.

The above case clearly and completely answers your question and is in accord with previous opinions rendered by this Department on the same subject, copies of which were sent you in our letter of May 17th.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General

JLM:EG