

SCHOOLS: District must pay tuition of high school students outside the district. Parents liable for tuition when.

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Honorable Joe W. Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri

Dear Mr. Collins:

This department is in receipt of your request for an official opinion which reads as follows:

"In the case of a rural district not having sufficient funds to pay the receiving high school district's tuition and transportation charges has the receiving high school district the legal right to look to the parents for the remainder of these funds and should the parent not accept this responsibility can the receiving high school district stop said students from further pursuing that years educational course.

"If the sending district is responsible for these tuition students attending high school and the board refuses to vote the necessary levy is there any means by which the sending district could be forced by the receiving high school district to pay this tuition."

At the outset, it is necessary to discuss the law and the cases applicable to the question of the payment of tuition of high school students who, because the school district in which they live does not maintain a high school, are forced to attend a high school outside of the district.

Section 10458, M.S.A., Laws of Missouri, 1945, page 1657, provides, in part, as follows:

"The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered; \* \* \* ."

The effect of this part of the statute is tersely stated in the case of Linn Consol. High School Dist. No. 1 vs. Pointer's Creek Public School District, 203 S.W. (2d) 721, l.c. 724:

"\* \* \* Section 10458 requires such a district to pay the tuition of its children who have finished the grades and attend high school in another district. \* \* \* ."

Section 10458 further provides that the rate of tuition that must be paid by the sending school district is to be the cost per pupil of maintaining the school attended less fifty dollars (\$50.00), which is paid by the state. The sending school district is liable for this payment from the funds of the district, and they must levy the entire constitutional amount, if necessary, in order to pay the costs of sending its high school students to another district or school. Section 11, Article X of the Constitution of Missouri, 1945, permits a school district to levy sixty-five (\$.65) cents on the one hundred dollars (\$100.00) valuation without the approval of the voters of the district. Any greater amount must be voted on and approved at an election held for that purpose. In the Linn Consol. High School District case, cited above, the Linn County High School District sued the Pointer's Creek District for tuition of pupils residing in the Pointer's Creek District who had attended high school at Linn. The Court held that the Pointer's Creek District had the duty to pay for such tuition, and the

fact that the levy had not produced sufficient funds to pay the obligation was no defense if the maximum constitutional amount had not been levied. In view of the statute and the above case it will be seen that the duty of paying the tuition rests upon the sending school, and in order to pay off such obligation, the maximum constitutional amount must be levied, if necessary.

However, Section 10458 further provides:

"\* \* \* but no school shall be required to admit any pupil, nor shall any school be denied the right to collect tuition from a pupil, parent, or guardian, if the same is not paid in full as hereinbefore provided. \* \* \* ."

Under the above provision, the receiving school has the right to refuse to admit any pupil whose tuition has not been paid. At first reading it might appear that the receiving school is entitled to look to the pupils, parents or guardians for the tuition if the same is not paid by the sending school district. The section, however, goes on to state that:

"\* \* \* In no case, however, shall the amount collected from a pupil, parent, or guardian exceed the difference between fifty dollars and the per pupil amount actually paid by the state, \* \* \* ."

This section states that the amount that the pupil, parent or guardian is liable for, is the difference between fifty dollars (\$50.00) and the amount paid by the state. The purpose of this section is to hold the pupil, parent or guardian liable only if the amount received from the state did not total fifty dollars (\$50.00). The Legislature realized that in some years the state aid given to school districts who send their high school students outside the district might not amount to fifty dollars (\$50.00), and, therefore, provided in such case that the difference between the state aid and fifty dollars (\$50.00) must be paid by the pupil, parent or guardian. We can take judicial notice of the fact that since the passage of Section 10458 the state school fund revenue has been sufficient to pay the entire amount, and that the pupil, parent or guardian has never been

called upon to make up the difference. What was said in the Linn Consol. High School District case, supra, is not contrary to this view, because therein it was argued that: "\* \* \* plaintiff can collect the tuition from the pupils or their parents or guardians, citing Section 10458, supra. \* \* \* ." The Court did not pass upon this question but merely said that "The primary obligation is on the district. ", and did not discuss the liability of the pupil, parent or guardian.

Furthermore, if the sending school district has not levied the maximum constitutional amount then the receiving school district under authority of the Linn Consol. High School District case may obtain judgment against the sending school district for the tuition it owes upon the students residing within the district and who attend the high school district outside said district. After a judgment has been obtained then, as stated in the case of State ex rel. Wood vs. Hamilton et al., 136 S.W. (2d) 699, mandamus will lie to enforce the collection of an additional school levy for the payment of the judgment against the district. However, this procedure is open only if the sending school has not levied the maximum permitted by the Constitution. If the maximum has been levied, and the voters of the district refuse to vote an additional amount, then we know of no way that the district may be forced to provide the additional revenue to pay for the cost of maintaining said district, including the tuition of its high school students. Of course, the receiving school district may refuse to accept the high school students if the tuition is not paid.

#### CONCLUSION.

It is, therefore, the opinion of this department that: a school district which does not maintain a high school must pay the tuition of its children who have finished the grades and attend high school in another district. The pupil, parent or guardian is responsible for the payment of tuition only if the amount received from the state is less than fifty dollars (\$50.00), and such responsibility only extends to the difference between fifty dollars (\$50.00) and the amount received from the state.

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It is further the opinion of this department that: a high school district who accepts students from another district which has not levied the maximum constitutional amount may sue the sending school district for the amount of the tuition, and after having obtained a judgment, mandamus the sending school district to levy the additional amount within the constitutional limit. If the sending school district has levied the maximum constitutional amount, and the voters of the sending district refuse to approve a larger levy then the receiving school district has no recourse against the sending school district, if said district is unable to pay, other than to refuse to admit the pupils from said sending district.

Respectfully submitted,

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APPROVED:

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