

OPINION
62-216

April 17, 1962 (OPINION)

SCHOOL DISTRICTS

RE: Tuition - Multiple County Districts

This is in reply to your letter of April 5, 1962, concerning a patron of the Grandin School District which district includes territory in Traill and Cass Counties. The physical plant of the school itself is located in Grandin, in Cass County. The patron is a resident of Traill County. The question presented is whether, under the provision of section 15-40-17 of the 1961 Supplement to the North Dakota Century Code, an appeal from the decision of the school board of the school district of residence should be taken to the Cass County Committee or to the Traill County Committee.

Section 15-40-17 of the North Dakota Century code provides, insofar as is pertinent, as follows:

". . . .

The parent or guardian of any student who is a resident of a district providing a high school education may apply to the school board of the school district of residence of the student for approval of the payment of tuition charges to another school district for attendance of the student at the high school in such other school district. If the school board of the district of residence shall approve such application, it shall pay the tuition charges in accordance with the application as approved. In the event such application shall be disapproved, the parent or guardian of the child may appeal the question to the county superintendent of schools, and a committee consisting of the county judge, state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the student concerned and render a decision in regard to the tuition charges. If the committee shall find the attendance of the student in question is necessitated by shorter distance or other reason of convenience, including previous attendance in another high school, it may approve the payment of such tuition charges. . . . If the committee shall find that the attendance of the student at a high school outside the district is not necessitated by shorter distance or other reasons of convenience, the district of residence shall not be required to pay such tuition charges. . . ."

As we have indicated in previous letters on this matter, this is one of the instances in which no provision is made in the law for multiple county districts. We have, therefore, come to the conclusion that the best procedure to follow in these instances is as follows:

The parent or guardian, if the application to the school board of the school district of residence has been disapproved, should appeal the question to the county superintendent of schools of the county of the student's residence. The appeal should then be considered by a committee consisting of the county superintendent of schools, the county judge and the state's attorney of all the counties in which portions of the school district in question are located. Thus in the instance at hand, we believe the appeal should be made to the county superintendent of schools of Traill County and the appeal should be considered by a committee consisting of the county superintendents of schools, the county judges and the state's attorneys of Cass and Traill Counties, meeting jointly.

Since the statute does not provide which county committee shall have jurisdiction of the appeal in those instances in which a school district is located in two or more counties, we believe it proper to assume the Legislature intended that the committees of all the counties concerned should have jurisdiction of the matter. It is our opinion that this procedure should be followed until such time as the matter is clarified by the Legislature or the opinion of a court of competent jurisdiction indicates otherwise.

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