

OPINION
65-273

August 26, 1965 (OPINION)

Mr. M. F. Peterson

Superintendent

Public Instruction

RE: Schools - Nonresident Students - Tuition

This is in reply to your letter of August 18, 1965, relative to Sections 15-29-08 (3, 14), 15-40-17, 15-40-17.1 and 15-40-26 of the North Dakota Century Code, as amended by the 1965 Legislative Assembly (Chapter 146, 1965 Session Laws). These laws pertain in part to the admission of nonresident students and permit the parents to pay the tuition so their students may attend a public school outside of the district of residence. You ask the following questions:

- (1) Does this law make it mandatory for a parent to receive official notice that the school board will not pay the tuition, and must he receive official notice from the county committee, and in case of high school students, from the State Board that the local board is not required to pay the tuition before he is eligible to make the tuition payments himself?
- (2) In event that a parent is not concerned about his district's paying the tuition and he is willing to pay the tuition, must he consult with the local school board and/or county committee?
- (3) Does this law contemplate that a parent must consult with the local school board and county committee whenever he wishes to send his child to a public school outside his district of residence even though he is willing to pay the tuition?"

Section 15-29-08(3, 14) of the North Dakota Century Code, as amended, governs this matter insofar as elementary students are concerned. These sections provide in part:

The powers and duties of the school board of a public school district shall be as follows:

* * *

3. * * * The admitting districts shall receive pupils only when schools of the admitting districts will not be injured or overcrowded and the board of the sending district and the board or boards of the receiving district or districts have entered into an agreement governing the attendance of

such pupils as may be enrolled or when tuition will be paid by a parent or guardian in the manner provided in Subsection 14 of this section.* * *

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4. * * * If the attendance of an elementary pupil from another district is necessitated by shorter distance or other reasons of convenience, approval or disapproval shall be given by a three-member committee consisting of the county judge, state's attorney, and the county superintendent of schools within fifteen days after consulting the school boards of both districts concerned, and the balance of the tuition, * * *

A school board may admit elementary pupils from other districts to its schools when it can be done without injury or overcrowding the schools even if such pupils have not received approval from the school board of their residence or from the three-member county committee provided the parent or guardian pays the tuition of each pupil, * * *."

Section 15-40-17.1 of the North Dakota Century Code, as amended, provides in part:

Notwithstanding the provisions of Section 15-40-17 a school district may admit nonresident students for whom tuition payments have not been approved by the school board of their residence or the three-member county committee, if such admittance can be done without injuring or overcrowding the school to which the student will be admitted, and if tuition is paid by the parent or guardian in the amount and manner prescribed in this section.* * *."

The statute quoted in part immediately above applies to high school students. Both the statute governing admission of elementary pupils and the statute governing admission of high school students permit nonresident students to attend a public school "even if such pupils have not received approval from the school board of their residence or from the three-member county committee" or "for whom tuition payments have not been approved by the school board of their residence or the three-member county committee" if the parents or guardian pays the tuition.

As you have noted in your letter, the above provision relative to the admittance of nonresident students upon payment of their tuition by a parent or guardian was contained in Senate Bill 54 of the 1965 Legislative Assembly. This bill was a Legislative Research Committee Recommendation and at page 73 of the 1965 Report of the North Dakota Legislative Research Committee we find this statement:

Although not specifically directed by any study, it was brought to the attention of the Committee that the Supreme Court of North Dakota has recently held (122 N.W. 2d 816) that under state law a pupil could not attend school at a public school outside of his or her district of residence, even though the parents of the pupil were willing to pay the tuition costs

involved. The Court stated that the only circumstances under which such attendance would be legal were when such attendance was based on reasons of convenience and was approved by the county committee, or when such attendance was consented to by the pupil's district of residence, which district would then be required to pay to the admitting district the tuition payments provided for in the law.

The Committee is of the opinion that a pupil should be permitted to attend school in a district other than his district of residence in instances where such attendance would not result in injury to or overcrowding of the admitting school, and where the parent or guardian actually pays the tuition for such pupil. Accordingly, a bill is recommended which will make this possible, as well as provide a method of computing the amount of tuition to be paid by the parents of the nonresident student in such cases. * * *."

It is apparent from this statement that the Legislative Research Committee intended to modify the effect of the decision in *Myhre v. School Board of North Central Public School District No. 10*, 122 N.W.2d. 816 (1963) which held that a nonresident student could not attend a public school in another district unless his district of residence agreed to pay the tuition or the district of residence was ordered to pay the tuition by the county committee or State Board of Public School Education.

It is to be noted that the Legislature, in enacting Senate Bill 54 referring to pupils not receiving approval from the school board of their district of residence or the county committee, intended that the pupil must apply to the school district of residence for approval but, if the school board rejected the application, the pupil need not apply to the county committee before his parents or guardian could pay the tuition to a public school in another district. The Legislature used the alternative word "or" and since the initial application must be made to the school board of the district of residence, it follows that it need not be appealed to the county committee if it is rejected by the school board in order to entitle the parents or guardian of the pupil to pay the tuition to a public school in another district. If, however, the pupil does appeal the decision of the school board to the county committee and the application is also rejected by the committee, the parents or guardian of the pupil may nevertheless pay the tuition.

It is to be noted that requiring the submission of the application to the school board of the district of residence before permitting the parents to pay the tuition will prove a more orderly procedure and will serve to inform the district of residence that the pupil is considering attending school in another district.

In direct response to your questions:

1. It is our opinion the law requires a parent to receive official notice that the school board of the district of residence will not pay the tuition before the parents or guardian may pay the tuition. It would not be necessary for a high school student to appeal the matter to the

county committee or the State Board or for an elementary student to appeal the matter to the county committee. If the decision of the school board is appealed and rejected by the county committee in the case of elementary students or by the county committee and State Board in the case of high school students, the parents or guardian may nevertheless pay the tuition.

The only exception to "official notice" would be in those instances in which the school board refuses to take action on the application. In such instances their refusal to take action on the application within reasonable time would constitute a rejection of the application and the matter could then be presented to the county committee or the parents or guardian could pay the tuition.

2. It is our opinion the parent must first consult with the local school board before he is entitled to pay the tuition for the pupil's attendance outside of the district. It is not necessary to appeal the rejection of the application to the county committee before the parent is entitled to pay the tuition for the pupil's attendance outside of the district.
3. It is our opinion the law contemplates application to the school board whenever a parent wishes to send his child to a public school outside the district of residence even though such parent is willing to pay the tuition. Application to the county committee is not necessary.

HELGI JOHANNESON

Attorney General