

**OPINION  
65-292**

January 7, 1965      (OPINION)

Honorable M. F. Peterson  
Superintendent  
Public Instruction

RE: Schools - Tuition - Appeals to State Board

This is in reply to your letter of January 5, 1965, relative to Section 15-40-17 of the North Dakota Century Code, as amended, providing for tuition appeals to the State Board of Public School Education. You note the statute provides in part: "The decision of the committee may be appealed to the state board of public school education, and the decision of such board shall be binding upon all parties."

You then ask the following question:

Does this mean that the local school board which refuses to pay the tuition, and has been ordered to do so by the county committee, can appeal the question to the State Board of Public School Education?"

In order to more fully illustrate the matter at hand, we quote extensively from the statutory provision, Section 15-40-17 of the North Dakota Century Code, as amended, relative to the matter in question:

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 reasons of convenience, including previous attendance in another high school, it may approve the payment of such tuition charges. The school district of residence of the student shall thereafter be required to pay such tuition charges, and upon notification by the admitting district of the failure of the district of residence to pay such tuition charges, all county equalization

payments and payments from the state under this chapter to the district of residence shall be withheld in the same manner as provided in this section in the case of a district not providing a high school education. 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. The decision of the committee may be appealed to the state board of public school education, and the decision of such board shall be binding upon all parties."

You will note the above statute provides for an appeal to a county committee by the parent or guardian of the child concerned if the school board of the district of residence refuses to approve the application for tuition payments. It is obvious the statute specifies only the parent or guardian since the school board would not appeal its own decision to the county committee. However, with regard to the appeal from the county committee to the State Board of Public School Education, the statute only provides the decision of the county committee may be appealed to such board and further provides the decision shall be binding upon all parties. Since the district of residence is obviously a party to the appeal in the sense that they are concerned with the decision of the board (it is the school board's initial decision which is, in effect, being considered) it would appear they would have the right to appeal from the decision of the county committee in the same manner as the parent or guardian of the child concerned.

Had the Legislature intended only the parent or guardian be permitted the right of appeal to the State Board, they could, and, we believe would, have so provided. Since the Legislature has seen fit to permit an appeal from the county committee to the State Board, it would not seem reasonable to permit an appeal by one of the parties concerned (the parent or guardian) and not permit an appeal by the other party concerned (the school district of residence), particularly when such board must be consulted by the county committee.

It is therefore our opinion that, since the statute does not limit the appeal from the decision of the county committee in the above matter to the parent or guardian of the child concerned, the school district of residence also has the right under the statute to appeal the decision of the county committee to the State Board. In any event, whether the appeal is taken by the parent or guardian or by the school board of the district of residence, the decision of the State Board is binding upon both parties.

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