

OPINION
66-203

November 17, 1966 (OPINION)

Mr. G. J. Simonson, Clerk

Cranberry Valley School District No. 28

Fillmore, North Dakota

RE: Schools - Tuition - Residence of Student

This is in reply to your letter of November 14, 1966, in which you set forth the following facts and questions:

We, the school board of Cranberry Valley School Dist. No. 28, would like your advice on the following matter: A boy, 15 years of age, is staying in our district with a family on a farm. His parents reside in Williston and have a night club there. They are both living together and have several other children. The family this boy is staying with now got guardianship papers which I am enclosing. Who is liable for his tuition? We do not have high school here but transport them by bus to Rugby. This boy went to school in Williston last year but worked on this farm last summer and stayed on to go school in Rugby."

The state's attorney is the legal advisor of school officials and this matter should be presented to him for his consideration. We would, however, make the following observations for your consideration.

This statutes relative to tuition make reference to the residence of the "parent or guardian." Where a legal guardian has been appointed for a student and where the student resides with such guardian, the school district in which such guardian lives would, in our estimation, be considered the residence for school purposes.

Our Supreme Court has also held that the residence of the child for school purposes is not necessarily the residence of the parents and that where a child lives in a district, although not with his parents, and lives there for all practical purposes and not merely for attending school therein, that district becomes the child's district of residence for school purposes. See *Anderson v. Breithbarth*, 62 N.D. 709, 245 N.W. 483. In that case the child lived with a relative and the relative had not secured legal guardianship papers. From the facts as we have them, it would appear this child is living in the district for all purposes and not merely for the purpose of attending school. He lives there in the summer as well as during the school term. The rationale of the *Anderson* case, *supra*, would therefore appear applicable. In addition the court has appointed residents of the district his legal guardians and he is living with such legal guardians.

In view of these facts and the statutory and case law of this state, we would conclude that the residence of the child in question, for

school purposes, is the Cranberry Valley School District No. 28 and, since that district does not operate a high school, they must provide tuition payments so that such child may attend high school in another district.

HELGI JOHANNESON

Attorney General