

**OPINION
68-313**

August 5, 1968 (OPINION)

Mr. H. J. Snortland

Assistant Superintendent

Department of Public Instruction

RE: Schools - Tuition - Attendance Out of State

This is in reply to your letter of July 31, 1968, relative to a tuition matter. You state the following facts and questions:

We have received a letter from Mrs. Ruth Rust, Clerk of Hillsboro Public School District. Mrs. Rust writes the following:

'One of the students from our district lived in Minneapolis with her brother for several months during the past school year.* * * She attended school while living with her brother for which he was required to pay tuition.

'We would like an opinion from the attorney general as to whether or not we may reimburse her brother for the tuition he advanced for this student for the past year and to what extent we will be liable for the coming year should she remain in Minneapolis.'

The question which Mrs. Rust brings to our attention may not be a single case and the question may arise on some other occasion. In your opinion, may the Hillsboro School District pay tuition for the student mentioned in this letter and is the Hillsboro Public School District liable for future tuition."

Section 15-40-14 of the North Dakota Century Code, as amended, provides in part:

A student who lives within twenty miles of another state or in a county bordering on another state and in a school district which has no high school, or which does have a high school and the attendance has been authorized in accordance with the provisions of section 15-40-17, with the approval of the county superintendent of schools, may attend a four-year public high school in an adjoining state and payments from the county equalization fund shall be paid to the district in which the high school which he attends is located in the amount provided for in this section."

In this instance, we assume the student in question is a resident of Traill County which county does, of course, border on the State of Minnesota. Hillsboro Public School District does, however, operate a public high school. Therefore, the student has no right to attend school in another State and obligate the district to tuition payments unless her attendance therein has been authorized as provided in

section 15-40-17. Section 15-40-17 of the North Dakota Century Code, as amended, provides that a student wishing to attend high school in another district may apply to the district of residence for permission. If the Board rejects the application, the parents of the student may appeal to the three-member county committee, and, if rejected by them, may appeal to the State Board of Public School Education.

The School District can be obligated to pay tuition only if this procedure is followed. Mrs. Rust's letter does not state whether this procedure had been followed prior to the time the student attended school in Minneapolis. However, we assume it was not. We would also note the statute provides the payments from the county equalization fund should be paid to the district in which high school the student attends is located. In this instance, the brother of the student is apparently seeking reimbursement. The statute contemplates determination of these matters prior to the time of school attendance, not subsequent thereto.

We are impressed with the fact that section 15-40-14 of the North Dakota Century Code as quoted above was obviously meant to apply to those areas which border another state and when, for various reasons, it would be better for the student to attend school in a district which lies near the district of residence, although in another state. While the statute does not so specify, we believe this could be the only purpose in the enactment of such a statute. It was surely not intended to permit a student living in a county bordering on another state to attend any other school in that state, even though it be on the other side of the state. The reasons for a student's attendance in another district are specified in section 15-40-17 which states in part: "If the committee shall find the attendance of the student is necessitated by shorter distance, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the particular student, or other reasons of convenience, it may approve the payment of such tuition charges." While we are in sympathy with the student's problems herein, it does not appear that this situation is one which was contemplated by the statutes.

We would also note that a student in exactly the same situation who did not live in a county bordering the State of Minnesota would, without question, be unable to obtain tuition payments from the district of residence to attend school in Minneapolis. We must assume that the student attended school in Minneapolis, not because such school was located in the adjoining state (as contemplated by section 15-40-14), but rather because her brother was living in Minneapolis. The statutes do not, of course, authorize tuition payments for these reasons.

In direct reply to the questions presented, we do not believe the Hillsboro District may reimburse the student's brother for the tuition advanced to permit the student to attend school in Minneapolis. We do not believe the Hillsboro School District can be liable for tuition for the coming year should the student determine to remain in Minneapolis.

HELGI JOHANNESON

Attorney General