

**OPINION**  
**57-173**

January 4, 1957 (OPINION)

SCHOOL DISTRICTS

RE: Residence Requirements - Tuition

We have received your request for an opinion dated December 28, 1956, on the following question.

The facts are as follows: a mother and daughter have moved from a rural area into the Beach school district for school purposes. The father who is a county commissioner in his district stays on the farm in the home district. The mother has signed an affidavit that her residence is the Beach school district to which she and the daughter have moved for school purposes. The question then is, where is this family's residence for school purposes?

Section 54-0126 which you mention is the general law on residence in this state and provides as follows:

RESIDENCE; RULES FOR DETERMINING. Every person has in law a residence. In determining the place of residence the following rules shall be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death, the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian; and
7. The residence can be changed only by the union of Act and intent."

The question of residence can become a bothersome problem and can lead to confusion because it has no fixed legal meaning, and one may have residence in one place for one purpose and in another place for another purpose. Our Supreme Court in *Anderson v. Breithbarth*, 62 N.D. 709 said the phrase "residing in the district" found in our school laws covers a child who makes its home in that particular district, whether with its parents, or with other person, when that

place is the only home it has, a place to which the child comes, and where the child remains when not called elsewhere for labor or special or temporary purposes. This case further provides, "There is nothing in this construction of the law which permits any child to come into a school district merely for the purpose of obtaining school privileges."

The affidavit you enclose signed by the mother states she now resides and intends to continue residing in Beach, but your letter states that the mother and child have their residence in Beach for school purposes. This indicates to us that perhaps the mother maintains a home in Beach only for the school term and returns to the farm in the rural district during the summer. If this is so, then, of course, there can be no question that the residence of this child for school purposes is the rural district. If the mother resides in Beach the year around, there could be some question, although we believe as long as the parents are not divorced or separated that the residence of the father would in this case be the school residence of this child.

We, therefore, hold that the Beach school district is entitled to tuition either from the home district or the parents of the child.

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Attorney General