

**OPINION  
58-84**

July 15, 1958           (OPINION)

EDUCATION

RE:   General Provisions - Schools Free and Accessible;

School Ages - High School Student Over 21

We have received your letter dated July 10, 1958, wherein you state that a certain person over twenty-one years of age attended high school in a certain school district in this state last year, and you ask whether under our laws such person must pay tuition to such school district.

Section 147 of Article VIII of our State Constitution provides in part as follows:

"\* \* \*the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota\* \* \*."

This we take to be a command to the legislature to set up a school system and not a restriction on its power to provide free schools to those who do not come within the usual accepted description of children.

Section 15-4701 of the 1957 Supplement provides as follows:

"The public schools of the state shall be equally free, open, and accessible at all times to all children between the ages of six and twenty-one except that children who do not arrive at the age of six years by midnight December thirty-first, shall not start school until the beginning of the following school year."

You will note that this statute simply guarantees equally free, open, and accessible public schools to children of this state between the ages of six and twenty-one, but does not specifically refuse such privileges to those who do not fall within this age group. We seriously doubt that Section 15-4701 is a restriction upon a school district to refuse free school privileges to persons over twenty-one years of age. We believe a school district may when it does not create overcrowded conditions, or otherwise disrupt the operation of the school, allow persons over twenty-one years of age to enroll in its public schools without payment of tuition provided they are residents of the district.

Until the 1955 amendment it was common practice to enroll children under six years of age, and no tuition was ever charged in such instances, and this office held the law did not prohibit the school attendance of a child who was under six years of age on December thirty-first in any given year. This office held it was a matter

within the discretion of the school board.

We believe the same reasoning applies in the present case, and that a school district may accept a high school student who is over twenty-one years of age without charging tuition provided of course the student meets residence qualifications.

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Attorney General