

**OPINION
60-87**

April 12, 1960 (OPINION)

EDUCATION

RE: Powers and Duties of Common School District Officer - Pupils - Residence for School Purposes

We have received your request of April 7, 1960, for an opinion with reference to the following matter:

Harrison School District is located just outside the city of Minot, North Dakota. Dakota Boys Ranch is a licensed charitable child care agency and is located within Harrison School District. The home has a maximum capacity of thirty-two boys and presently is caring for twenty-five boys. Most of these boys have been placed in the home by order of courts and others under different type of arrangements, some by agreement with social agencies, etc. The Home has a bus and the boys are transported into Minot where some attend the elementary school conducted by Minot State Teachers College while others attend Minot High School. The question then arises as to where these boys have residence for school purposes and who is responsible for tuition fees for both the elementary and high school in Minot.

Section 147 of our Constitution reads as follows:

"A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, 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 and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."

Section 148 of our constitution is a mandate to the legislature and uses the following language:

"The legislative assembly shall provide at their first session after the adoption of this constitution, for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including the normal and collegiate course."

Section 15-4701 of the North Dakota Revised Code of 1943, as amended by Chapter 172 of the 1959 Session Laws, reads in part 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, * * *."

The leading case on residence for school purposes in North Dakota is *Anderson v. Breitbarth*, 245 N.W. 483, where the court held that a child of nonresident parents living with an aunt's family in a local school district was a resident of the district for school purposes. The court referred to the above section of the law and stated that a child of parents living in another state that comes into this state with the parents consent to live with relatives is residing in the district wherein such relative lives for school purposes.

In Minnesota the Supreme Court in the case of *State ex rel Board of Christian Service of Lutheran Minnesota Conference v. School Board of School District No. 3*, 287 N.W. 625, construing a statute similar to ours said the statute "uses the word resides in the broad sense of being an inhabitant as distinguished from the more restricted sense of domicile, and children of proper age inhabiting an orphan home in a school district are entitled to free education therein."

In the case of *Cline v. Knight et al*, 137 Pac. 2d. 680, the court held "Residence entitling a child to school privileges is construed in a liberal sense as meaning to live in, or be an inhabitant of, a school district, and it is sufficient if a child and its parents, or the person in loco parentis, are actually residents in the district, with apparently no purpose of removal."

See also *McNish v. State ex rel Dimick*, 104 N.W. 186, *State v. Thayer*, 41 N.W. 1014, and *Salem Independent School District v. Kiel*, 221 N.W. 519.

It, therefore, is our opinion that the children residing at Dakota Boys Ranch are residents of the local school district for school purposes and the local district is liable for tuition charges to the elementary and high school districts in Minot where the boys attend school.

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