

OPINION
61-217

September 7, 1961 (OPINION)

SCHOOL DISTRICTS

RE: Tuition - Residence

This office acknowledges receipt of your letter of August 26, 1961, relative to a matter of residence in connection with the payment of tuition in a school situation. You state that last year one Gerald Reule attended the Carrington school while he was making his home with his married sister who lives near Melville. You state that he is making his home with his sister for the purpose of easing the load on his own family, consisting of ten children in the home, residing with their parents in Cathay, and they are welfare clients. You add that another child is expected in this family very shortly. From what you have told me in this matter, it is my understanding that Gerald Reule makes his home permanently with his sister for economic reasons. You add further that last year the district in which Gerald Reule's sister resides, and in whose home he was staying, paid his tuition to the Carrington district; that this district has been annexed to the Carrington district, and that the Carrington district now advises that unless Cathay district pays tuition to the Carrington district he will be unable to attend the Carrington school.

You now raise the question: "Is Gerald Reule a resident of the Carrington school district insofar as school attendance is concerned?"

Of course, the statute makes provision for the payment of tuition for nonresident students, and that tuition must be paid either by the district in which the pupil resides or by the parents as the law and the facts in the case may be determined. However, "residence" in order to gain admission to a school is different from "residence" as the term is used in relation to other matters. As for example, there is a "residence" for voting purposes, a "residence" for poor relief, a "residence" for business purposes, and so on. The matter of "residence" in order to obtain admission to a public school in North Dakota is pretty well determined by our Supreme Court in a case entitled *Anderson v. Breithbarth et. al.*, 245 N.W., 483, in which the court adopted this principle:

"The state is interested to have all children educated in order that they may become good citizens. . . . If any child is actually dwelling in any school district, so that some person there has the care of it, and is within the school age, not incapable by reason of physical infirmity of attending school, and is not instructed elsewhere, then that child must go to the public school."

The case quoted above is a North Dakota case and the facts therein are similar to those set forth in your letter. In that case the court held that the phrase "residing in district," within the statute

declaring schools free, is not restricted to parent's domicile, but means actual residence of the child. The child in question was making her home with an aunt, whereas her actual parents were living elsewhere.

In reaching its decision in the above case, our Supreme Court took cognizance of what is now section 15-47-01 of the North Dakota Century Code which reads as follows:

"SCHOOLS FREE AND ACCESSIBLE - SCHOOL AGES. 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 October thirty-first of each year shall not start school until the beginning of the following year."

Section 1343 of the 1925 Supplement to the 1913 Compiled Laws of North Dakota read as follows:

"SCHOOLS EQUALLY FREE AND ACCESSIBLE. The public schools provided for in this chapter (sections 1105-1422 of the Compiled Laws of 1913) shall be at all times equally free, open and accessible to all children over six and under twenty-one years of age residing in the district."

You will note that the words "residing in the district" have been omitted from this section as it appears in the North Dakota Century Code. In *Anderson v. Breithbarth*, the court based its decision somewhat upon this proposition. "The historic policy of this state, in common with the general policy of every other state in the Union, is to maintain a free public school system for the benefit of all children within specified age limits. This policy existed prior to statehood and is crystallized in sections 147 and 146 of the State Constitution."

There is nothing in this construction of the law which permits a child to come into a school district merely for the purpose of school privileges, but where conditions exist as outlined in your letter, and the child is making his permanent home with someone other than his parents, the child is permitted to attend the school where his permanent home is located without payment of tuition.

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