

SCHOOLS: Children from orphans' home residing in families
in common school districts may attend without paying
tuition.

October 6, 1939



Honorable G. R. Chamberlin
Prosecuting Attorney
Cass County
Harrisonville, Missouri

Dear Sir:

This Department is in receipt of your letter of September 15th, wherein you request an opinion relating to payment of tuition by the children of Spofford Home in Kansas City, Jackson County. Your letter is as follows:

"I am writing your office at the request of Miss May Bowlin, our County School Superintendent, on account of the following condition and insistent contention having come up in one of the districts in this County.

"The main facts are based upon children sent from the Spofford Home in Kansas City, Jackson County, as it appears they send out the children who are residents of the home or under the home's care, to people in the country and pay a minimum amount for their board and these children have been of course enrolled in the schools.

"In one of the districts in the Northern part of this County the School Board appealed last year to the County Superintendent and raised objection to these children being sent to their schools, feeling no doubt that it was an unjust and unnecessary burden upon the District.

"There were some compromises made in this particular district last year, but this year the question has again come up, however it appears over only one child. It is asserted by the people who have the child that they expect to adopt him, however, for the purpose of the present contention we are treating the matter as the original complaint came up, to-wit, that the child is a proper charge of the Spofford Home. It is asserted that it is a further fact that this particular child is an orphan, both parents being dead.

"Under Section 9207, Revised Statutes of Missouri 1929, the Statutes set out four classes of children who are entitled to attend school wherever they may be: First, Orphan Children; second, Children bound out to apprentices; third, Children with only one parent; fourth, Where the parents do not contribute to the child's support and where the child is unable to pay tuition.

"The only question that seems to be debatable in this matter is whether or not the fact that the Spofford Home has charge of the child. That fact by itself would annul the provision of Section 9207 and that is the point particularly that the County Superintendent would be glad to have your valued opinion and of course any further information that might be of aid to us."

Section 9207, R. S. Mo. 1929, relating to orphan children is as follows:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district--said rules to

take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: Provided, that the following children, if they be unable to pay tuition, shall have the privilege of attending school in any district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support: Provided further, that any person paying a school tax in any other district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax."

It appears that the family who have the child in their home, which is now in your county, intend to adopt the child, but at the present time it may be considered that they have control of the child, supporting it, and have it as a member of their household.

There are a number of decisions which bear on this question. The one which particularly treats exhaustively of the question is that of *State ex rel. v. Clymer*, 164 Mo.

App. 671, l. c. 676, wherein is said the following:

"While the statute must be liberally construed, we also recognize the fact that it would not be right to permit children living in districts whose taxpayers have neglected or refused to maintain schools to have the benefits free of charge of schools in districts wherein the taxpayers have burdened themselves to erect school houses, employ competent teachers and maintain schools. (Binde v. Klinge, 30 Mo. App. 285.)

"Prior to 1885 the statute contained none of its present provisos, but simply authorized the board to admit non-resident pupils within the district, and to prescribe the tuition fee to be paid. In 1885 it was amended by adding the proviso: 'That orphan children, or any children bound as apprentices, shall have the privilege of attending school in any district in the state of Missouri in which they may find a permanent or temporary home, without paying a tuition fee.'

"While the statute was in this language, the case of Binde v. Klings, supra, was decided by the St. Louis Court of Appeals. In that case Mrs. Binde, a widow, who had resided in the Hermann school district for more than forty years, applied to the court for an injunction to restrain the directors of that district from refusing the privileges of the school to her granddaughter, Paula Muehl. Paula's father resided in Montgomery county, but she was living with her grandmother at Hermann, under an arrangement made with

the child's father, to the effect that she was to live with the grandmother until the latter died or the child married. In fact, the arrangement in that case was substantially the same as the one we are now considering. In passing on the case, Judge Thompson held the word 'resident' used in the statute, was to be distinguished from the word 'domicile,' and without the proviso in the statute, if the child had gone to live with the grandmother without any expectation of returning to its parental residence while the grandmother lived, or while the child remained unmarried, and not merely for the purpose of acquiring the privilege of a better school than existed at the domicile of the parent, she might be a resident of the grandmother's school district, although the father resided elsewhere. The court held, however, that the proviso limited the general language, and only permitted orphan children, or children bound as apprentices, to attend schools in districts where they had a permanent or temporary home without paying tuition fees, and said that by admitting certain non-residents the Legislature necessarily excluded the idea that other non-residents were entitled to the privilege.

"A careful reading of the Binde case will lead to the conclusion that had the statute then been in its present form, a different judgment would have been rendered.

"The statute is not ambiguous, and plainly provides that children who are unable to pay tuition, and whose parents are not contributing to their support, shall have the privilege of

attending school in any district in which they may have a permanent or temporary home. It will be noticed that the privilege is granted, regardless of the residence or domicile of the parent.

"It seems to us that the evidence clearly brings the case within the fourth subdivision of the statute. The boy, to all intents and purposes, was a resident of the school district, although his domicile may have been at Springfield. He was living in the district as a member of the relator's family, and under an agreement made with his father by which the relator had agreed to take, care for, and educate him. It was not a contract made for the sole purpose of permitting him to attend the Steelville school. The grandparent was aged, and the boy had lived with him a part of the time for more than five years, and undoubtedly there existed between them a degree of affection perhaps equally as strong as that between father and son. The common experience of mankind proves the truth of this statement, and therefore, it needed the testimony of no witness to establish it. But the grandfather did testify that he liked the boy and wanted him to live with him, and it was satisfactory with the father and the son also. There is no claim that the contract was not made in good faith, or that it was not being strictly performed by all parties thereto. The fact that it was not in writing was a matter that the parties alone were concerned about, and no stranger could set it aside or take advantage of the failure to observe formality in its execution."

Another decision discussing the question of residence is that of Northern v. McCaw et al., 189 Mo. App. 362.

Conclusion

We think Section 9207, supra, independent of the decision which we have quoted herein, is plain and comprehensive enough in its terms to apply to the situation which you present, because the statute states,

"shall have the privilege of attending school in any district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support:"

We are of the opinion from the facts surrounding the child or children of the Spofford Home, if they be in a district in which families are maintaining them, even though the home has not relinquished its authority over the children, that such children are entitled to attend school in such districts without the payment of tuition.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

W. J. BURKE
(Acting) Attorney-General

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