



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 26, 1976

ATTORNEY GENERAL OPINION NO. 76-134

Peter K, Curran
OF PETEFISH, CURRAN & IMMEL
Lawyers
Lawrence National Bank Building
643 Massachusetts Street
Lawrence, Kansas 66044

Re: Schools--Boards of Education; Organization, Powers,
Finances--Contracts for Tuition

Synopsis: A board of education is not required to charge tuition for students attending a school in its district while residing in another district.

The amount of any tuition a board determines to require, if it should so choose, may be fixed by the board, again, in the exercise of its sound discretion, and it may properly take into consideration any contributions to the revenues of the district paid by parents of students of other districts.

The parents of the non-resident student are responsible for any non-resident tuition charges.

Finally, it is not unlawful for a unified school district to accept a non-resident student without the written consent of the board of education of the student's resident school district.

* * *

Dear Mr. Curran:

You inquire whether a unified school district may permit the attendance of students not residing within the district without

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the payment of tuition by either the school district where the student resides, or by the parents of the student.

K.S.A. 72-6757 states thus:

"Boards may contract with each other for the payment of tuition for students attending school in a unified district not of their residence. Such contracts may be made for students who reside at inconvenient or unreasonable distances from the schools maintained by their unified district or who should, for any other reason deemed sufficient by the board of their unified district, attend school in another unified district. A board may contract with a school district located in another state for the payment of tuition for students from this state attending schools in another state, or for students from another state attending school in this state. The board of the sending school shall provide for the transportation of such students in a manner provided by law."
[Emphasis added.]

Contracts between boards of education for the payment of tuition for students attending a school in a district other than that of their residence may be entered into at the option of the board. A board of education is not required to charge tuition for students attending a school in its district while residing in another district. The adoption of a policy requiring tuition rests in the sound discretion of the board. I enclose a copy of an opinion of Attorney General Vern Miller to Jones Mason, dated June 28, 1971, reaching the same conclusion.

Inasmuch as your second and third questions are based upon the assumption that tuition is required, they are moot. It is sufficient to point out that the amount of any tuition a board determines to require, if it should so choose, may be fixed by the board, again, in the exercise of its sound discretion, and it may properly take into consideration any contributions to the revenues of the district paid by parents of students of other districts.

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If the board of education should determine to charge tuition, you ask whether the receiving school may charge the parents of the student a tuition fee directly, or whether K.S.A. 72-6757 restricts the receiving district to payments from the district of the student's residence. The language of K.S.A. 72-6757 is permissive, as opposed to mandatory, in nature. Specifically, the statutes provide:

"Such contracts may be made for students who reside at inconvenient or unreasonable distances from the schools maintained by their unified district or who should, for any other reason deemed sufficient by the board of their unified district, attend school in another unified district."

Thus, all boards of education are authorized to contract to pay the tuition of a student attending school in another unified district for those reasons therein specified or for any other reason deemed sufficient by the board. The decision to pay a resident student's tuition at a school in another district is one which rests with the discretion of the board. Unless, the board determines that the circumstances of the individual student necessitates the attendance at a school located in another district, the parents of the student are responsible for any tuition assessed by the receiving school district. Presumably the words "inconvenient or unreasonable distances" are used in conjunction with K.S.A. 72-8302 which sets forth the factual circumstances under which the board must furnish transportation. If, after evaluation of the pertinent considerations the board determines the most feasible alternative is to pay the student's out-of-district tuition, K.S.A. 72-6757 merely permits the board to exercise that option. Otherwise, the parents of the non-resident student are responsible for any non-resident tuition charges.

Finally, you have inquired whether it is unlawful for a non-resident to attend a district school without the written permission of the board of the losing school district. Based upon an evaluation of the provisions contained in Chapter 72 of the Kansas Statutes Annotated and particularly K.S.A. 72-1046, K.S.A. 72-1111, K.S.A. 72-6757, and K.S.A. 72-8301, et seq., my research has revealed no provision which requires the written permission of the board of the sending district before a student is eligible to attend school in another district. Therefore,

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it is my opinion that it is not unlawful for a unified school district to accept a non-resident student without the written consent of the board of education of the student's resident school district.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv