



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Jarvis Co

Honorable I. A. Woods
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. O-2510

Re: Right of student to reimbursement for tuition and transportation paid in attending school outside district of his residence.

We are in receipt of your letter of July 2, 1940, requesting the opinion of this department, to which is attached a letter by Mrs. Bertha B. Allen, County Superintendent of Gregg County, setting out the following facts:

"A student residing in the Spring Hill Common School District asked for a transfer for the school year 1939-40. His transfer was canceled by the County Board together with other transfers. His parents sent him to Longview Independent School which is out of the district. His grade was taught at the school in the district in which he resided. However, the parents state that he could not get in the Spring Hill School one or two of the subjects that he chose to study. The parents are of the opinion that they are entitled to reimbursement from the Board of Trustees for tuition paid and transportation furnished for this pupil."

Article 2901, R. C. S., 1925, reads as follows:

"Every child in this State of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have

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been enumerated elsewhere, or may have attended school elsewhere part of the year."

Article 2902, R. C. S., 1925, provides as follows:

"All children, without regard to color, over six years of age and under eighteen years of age at the beginning of any scholastic year, shall be included in the scholastic census and shall be entitled to the benefit of the public school fund for that year. The board of school trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over six and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district."

Article 2696, R. C. S., 1925, authorizes the transfer of students from one district to another by the County Superintendent upon proper application being filed and provides for an appeal to the County Board of Trustees "who shall have the right to annul and cancel the transfer allowed by the county superintendent."

Article 29221 (1) Vernon's Texas Civil Statutes provides in part:

"Sec. 1. The board of trustees of any common or independent school district, whether organized by General or Special Law, which levies and collects a maintenance tax for the purpose of supplementing the available school fund received from the State and county shall admit into the public schools of the district free of tuition, all persons who are over six (6) and not over twenty-one (21) years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said common or independent school district.

"Any pupil between the age of six (6) and twenty-one (21) residing in a rural district or other district, which levies a local maintenance tax, who has been promoted to a high school grade not taught in his home district,

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shall have the right to attend a standardized, classified, or affiliated high school in his home county or in any other county at the expense of his home school district, if such district as determined by its budgeted expenditures according to the General Budget Law is financially able to provide tuition, or otherwise at the expense of the State of Texas.

"If the name of such pupil appears on the census roll of his home district and if the pupil attends a high school in the county of his residence, his State and county per capita funds shall be transferred to the receiving district under the General laws governing the transfer of pupils. If the pupil's name appears on the census roll of his home district and if he attends a high school in a county other than that of his residence, his local district shall pay to the school which he attends an amount equivalent to the State and county per capita apportionment. The receiving district shall allow such pupils to attend school for as long a time as the State and county available funds will operate the public schools of the race to which such transferred pupil belongs, such free school term for such pupil to being with the date such transferred pupil enters the school of the receiving districts. After the expiration of the time that the State and county available funds will operate the free schools of the district, the receiving district may charge such pupil tuition at a rate fixed by the Board of Trustees of the receiving district, and approved by the State Department of Education, such rate to be based upon the budgeted expenditures for maintenance of the high school grades of the receiving district for the current school year, exclusive of bonds and interest thereon.

"If the name of such pupil is not on the census roll of his home district, he may attend a high school under the same terms as the above pupils, except that his home district and the State will be obligated for the pay-

ment of tuition for the entire time of his attendance in the receiving district. Provided, any obligations of the State of Texas as herein referred to in this Act shall be paid from the Rural Aid Fund from the sum or sums set aside for rural high school tuition in said law. It is further provided that in no instance shall the State be obligated to pay out of the funds appropriated for this purpose a tuition rate in excess of Seven Dollars and Fifty Cents (\$7.50) per month per pupil. Provided further, that this provision shall not alter or limit the operation in any county which has by special Act created a County Equalization Fund and where said Fund is now being used to defray in whole or in part, rural high school tuition fees."
(Underscoring of statutes ours)

Our school statutes contemplate that students shall attend the school of their home district. A receiving district may charge students who reside in another district a reasonable tuition. Opinion No. O-2177, a copy of which is enclosed herewith. Provision is made for the transfer of a student to a district other than his residence, together with the State per capita apportionment for such scholastic. The County Board of Trustees is vested with statutory authority to cancel and set aside transfers upon appeal, and the board having exercised its discretion, its action is not open to question by this department.

Article 2922L, supra, recognizes that in certain circumstances the home district should be obligated to furnish tuition for its resident scholastics to attend the schools of other districts and in the event the home district is unable to pay such tuition it may be paid by the State in proper cases. This obligation upon the home district to pay tuition for its scholastics is confined to students whose grade is not taught by the home district.

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It is our opinion that under the facts stated a student is not entitled to reimbursement for transportation and tuition paid in attending a school not in the district of his residence.

Very truly yours

APPROVED JUL 15, 1940

ATTORNEY GENERAL OF TEXAS

Wm. R. Miller
FIRST ASSISTANT
ATTORNEY GENERAL

BY *Cecil G. Cammack*
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