

School District, Attendance of Pupils From Another District. Public School, Open to What Pupils. Pupils, Right to Attend School. School Trustees, Duties Of With Reference to Non-Resident Pupils. School Moneys, Transfer Of for Non-Resident Pupils.

School children residing in one district may attend school in any district in the county, providing, there is sufficient room in such district to accommodate them; and the transfer of school moneys due to such pupils by the trustees of the district of their residence is discretionary with such trustees.

November 3, 1911.

Hon. W. E. Harmon,  
Superintendent of Public Instruction,  
Helena, Montana.

Dear Sir:

I acknowledge receipt of your request for opinion upon the following state of facts:

May pupils from one district attend the public schools in another district, notwithstanding the fact that the trustees of the district in which they reside refuse to pay their tuition or apportionment of school moneys to the district in which they attend school.

Sec. 876, Revised Codes, provides that pupils may attend school in any district and that the trustees of the district wherein they reside may, in their discretion, transfer moneys due by apportionment to such pupils to the district in which they attend. It is my opinion that by the provisions of this section, pupils may rightfully attend

school in any district in the county; provided there is sufficient room in such district to accommodate them. The further provisions that the trustees may in their discretion transfer moneys due such pupils to the district in which they could attend school calls for an exercise of sound discretion on the part of such trustees. For instance, should the pupils be residents of a small district having few pupils and the transfer of the school moneys due such pupils to another district would seriously interfere with the maintenance or conduct of the school in the original district, then it is my opinion that the trustees of such district, in the exercise of their discretion, may refuse to transfer such moneys to the district in which the pupils may attend school. However, if the pupils were residents of a district having a larger number of pupils and their attendance in another district and the transfer of the school moneys due them by apportionment to such district would not in any way hinder or interfere with the maintenance of the school in the district of their residence, then, it is my opinion, the trustees would be abusing their discretion in refusing to transfer the school moneys due to such pupils to the district in which they may attend.

Sub-division 2, Sec. 875, in enumerating the powers and duties of school boards give to school boards the right to fix the rate of tuition for non-resident pupils, but this has no bearing upon the right of the pupils to attend school—their attendance cannot be prohibited upon the ground of non-payment of tuition.

Vol. 2, Opinions Attorney General, 207.

Vol. 3, Opinions of Attorney General, 177.

It is, therefore, my opinion that the pupils mentioned in your enquiry may attend school in any district in the county, provided there is sufficient room in such district to accommodate them, and that the transfer of school moneys due to such pupils by the trustees of the district of their residence to the district in which they may attend school is discretionary in the trustees of such district of residence; such discretion, however, to be exercised in the manner above indicated.

Yours very truly,

ALBERT J. GALEN,

Attorney General.