

Opinion No. 65

Schools and School Districts—Tuition
—Transfer of Students—School
Budgets—Elementary Schools

- Held:** 1. The trustees of a school district have the power to enter into a contract with the parents of non-resident students for the payment of tuition.
2. It is the duty of the trustees of a school district to budget for and pay tuition for resident children who attend elementary school in another district if the county superintendent and the trustees of the school district of the school to be attended consent in writing to such attendance.

February 9, 1952.

Mr. John M. McCarvel
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. McCarvel:

You have requested my opinion concerning the validity of a contract between a school district and the parents of school children. You advise me that the children attend elementary school in a district where they do not reside, and the contract was entered into between the district and the parents for the payment of tuition by the parents for the children. You also state the trustees of the district where the children attend and the county superintendent have given written permission for such attendance, but the trustees of the district of the residence of the children have refused permission.

Section 75-1630, Revised Codes of Montana, 1947, as amended by Chapter 267, Laws of 1951, provides for the transfer of funds between school districts for the payment of tuition of transfer elementary children. This section provides in part:

"Children may attend public elementary schools in districts in the county outside of the district in which they reside, . . . when written permission is secured from the board of trustees of the district in which they are to attend school and when written permission has been given by

the county superintendent of schools of the county in which the children reside.

"When approval of attendance in another district within or without the county has been granted, the district in which such child resides shall pay to the school district where such child attends, an amount based on the following tuition rates . . ."

From the above quoted it is apparent that the consent of the trustees of the district of residence is not a prerequisite for the attendance of the children in another district.

Under the facts submitted the consent for attendance was secured from the trustees of the district operating the school to be attended and of the county superintendent and therefore it is the obligation of the district of residence to pay the amount of tuition as fixed in the schedule set out in Section 75-1630, as amended. A similar conclusion was reached in the case of *McClerkin v. San Mateo School Dist.*, 4 Cal. (2d) 363, 49 Pac. (2d) 830, 102 A. L. R. 226.

If the county superintendent had not consented in writing to the attendance, the trustees of the district where the children wished to attend elementary school could enter into a contract for tuition, as Section 75-1632, Revised Codes of Montana, 1947, as amended by Chapter 207, Laws of 1951, grants the power to a board of trustees:

"To determine the rate of tuition of non-resident pupils according to the provisions of Section 75-1630, Revised Codes of Montana, 1947, as amended."

That a school district may charge tuition for non-resident pupils and exclude them for non-payment was recognized in *Peterson v. School Board*, 73 Mont. 442, 236 Pac. 670.

While the trustees of a school district have the authority to charge tuition for non-resident elementary pupils attending their district, yet under the facts you submitted the requirements of Section 75-1630, Revised Codes of Montana, 1947, as amended, have been satisfied. It is the obligation of the district of the residence of the pupils to pay the tuition and the parents should be relieved of this obligation.

It is, therefore, my opinion:

1. The trustees of a school district have the power to enter into a contract with the parents of non-resident students for the payment of tuition.

2. It is the duty of the trustees of a school district to budget for and pay tuition for resident children who attend elementary school in another district if the county superintendent and the trustees of the school district of the school to be attended consent in writing to such attendance.

Very truly yours,
ARNOLD H. OLSEN
Attorney General