

**Tuition, Charge of. School Trustees, Fixing Tuition. Pupils, Foreign, to Pay Tuition. District Schools, Charge Tuition When.**

1. School board may require foreign pupils to pay tuition, and do not waive the right to collect the tuition by not demanding the same in advance.

2. Where rate of tuition is not fixed until after pupil has attended school, there is some doubt as to the right of the district to collect the same, but the district is justified in instituting proceedings therefor.

Helena, Montana, August 14, 1909.

Hon. S. P. Wilson,  
County Attorney,  
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your letter of the 9th instant, submitting the following questions:

As to whether the board of school trustees has the authority to charge tuition for non-resident pupils, and whether the district may maintain an action for the payment of tuition.

Section 875, revised codes, makes it the duty of the school boards "to determine the rate of tuition of non-resident pupils, etc., and this right to charge tuition is further recognized by the provisions of section 877 of the same codes. Section 876 makes it obligatory upon one district to receive children from another district, and they may refuse only upon the ground of insufficient room.

The authorities define tuition as the "charge made for instruction."

Linton v. Lucy Cobb Institute, 117 Ga. 678, 45 S. E. 53;

Cook County v. School, 125 Ill. 549;

State v. Regents, 34 Wis. 159.

The statute having made it the duty of the school board to determine the rate of tuition, certainly confers upon the district the right to enforce the payment of the tuition so determined. Where the tuition was fixed by the board prior to the time the pupil attended school, there can be no doubt but the district may enforce the payment of the tuition, and this right of the district is not waived simply because payment in advance was not required. Where, however, the date of tuition was not fixed until the close of the term a more difficult question is presented, and on which we have not been able to find any authority. However, from the fact that the board must determine the tuition, and must receive children from other districts, except where the room is insufficient, and from the further fact that a parent has no right to presume that foreign district will take his child without compensation, it would seem that it is the duty of the parent before permitting his child to attend a foreign school, to ascertain the charge made, or to be made, by the district for such attendance, and that he is not relieved of liability because the board had not yet determined the specific amounts to be charged, and that so long as the amount so fixed is reasonable, that it

is a legal obligation against the parent. If, therefore, a case of this kind arises, the district is fully justified in instituting proceedings to compel the payment of the tuition.

Yours very truly,

ALBERT J. GALEN,

Attorney General.