

**Opinion No. 645****Schools—High Schools—Residence  
—Children, Emancipation of.**

HELD: A pupil, whose parents are non-residents of the school district where the child attends, may have emancipated the high school pupil or placed him with a relative or guardian where the child makes its permanent home, and in such cases the rule that the residence of the parent is the residence of the minor child does not apply.

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November 21, 1934.

You request our advice as to the right of a high school girl, eighteen years of age, whose parents do not reside in the county, to attend school in the county without paying tuition.

Admission of pupils, not residents of the district, to attend any school, is within the discretion of the board of trustees, (Sec. 1056, R. C. M., 1921) and such discretion will not be interfered with unless abused. (Peterson v. School Board, 73 Mont. 442.)

The determination of the question of residence is a matter of fact in the determination of which the board likewise has large discretion. (Id.) It is the intention of the statutes that the management of the schools shall be left to the discretion of the board of trustees and not to the courts. (Kinzer v. School District, 129 Iowa 441; 3 L. R. A. (n. s.) 496). The actions of the board, however, are subject to a fairly well established rule on the question of residence, which rule is laid down in People v. Board of Education, 206 Ill. App. 381; Mt. Hope School Dist. v. Henderson, 197 Iowa 191, 197 N. W. 47. In these, and other pertinent decisions, it was held that, "the test of residence which will confer school privileges is

not the same as the test for taxation or the exercise of the right of suffrage."

A child whose parents are non-residents of the school district where the child attends, may have emancipated the child, or placed the child with a relative or guardian where the child makes its permanent home, and in such cases the rule that the residence of the parent is the residence of the minor child does not apply. (Mt. Hope Dist. v. Henderson, *supra*; Grand Lodge etc. v. Board, 110 S. E. 440, 90 W. Va. 8, 48 A. L. R. 1092.)