

Trustees may admit non-resident pupils and it has the power and it is its duty to determine the rate of tuition of such non-resident pupils.

2. If the county treasurer of the county of the pupil's residence cannot transfer funds for such tuition to the district in which the pupils attend then the parents or guardians of the pupil must be prepared to pay such part thereof as is not met out of the public funds, and the payment of taxes to a district by the non-resident pupil or his parents or guardians has no effect upon the residence of or liability for tuition for such non-resident pupils.

3. For school census purposes, the residence of the parents or guardian is the residence of the child except in a case where the child has never actually resided in such district.

December 17, 1934.

Mr. Fred Lay
County Attorney
Bozeman, Montana

We acknowledge receipt of yours of November 28, to which is attached a letter by Mr. Williams, Superintendent of the Bozeman City Schools. From Mr. Williams' letter we quote the following, on which you request an opinion from this office:

"We have several cases of families moving to Bozeman, who are being allowed transportation from other districts in amounts ranging from \$25 to \$40. In order to draw this transportation money the families refuse to allow the Bozeman district to have the names of the children for the Bozeman census. One of the families in question is from Meagher County and one is from Broadwater County. There is, therefore, no opportunity to bill the districts claiming these children for transfer of apportionment.

"I recognize that Sections 1010 and 1013 apply to this question. In our opinion it is just as mandatory in the law that districts which pay transportation to any family are also required to pay the tuition to the school where the family sends their children. In our opinion the purchase or rental of property in the

Opinion No. 9.

**Schools—School Trustees—Residence
—Tuition—Census.**

HELD: 1. The Board of School

district does not clear them from payment of tuition if they are drawing transportation money and if they refuse to release the names of the children for the Bozeman census."

Mr. Williams does not state whether the questions submitted relate to elementary or high schools, but from the facts as recited and other circumstances we assume that it is an elementary school matter.

Section 1013, Rev. Codes, 1921, as amended by Chapter 109, Laws of 1929, provides as follows: "Before children may attend the elementary schools in any district other than the one in which they reside, they must first secure the written consent of the Board of Trustees of the district in which they are to attend the school and also the written consent of the County Superintendent of Schools of the County in which said children reside, and the County Treasurer shall then transfer to the district receiving such pupils all moneys due by apportionment to them."

Section 1015, Revised Codes, 1921, as amended by Section 1 of Chapter 122, Laws of 1931, provides that "every school board, unless otherwise specially provided by law, shall have power and it shall be its duty to allow pupils residing in other districts to attend school in the district of which they have charge, if in their judgment there is sufficient room, and to determine the rate of tuition of such non-resident pupils."

Section 1056, Revised Codes, 1921, declares that "every public school not otherwise provided for by law shall be open to the admission of all children between the age of six and twenty-one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided * * *."

These provisions of the law cover the case fully. If the children in question are actual residents of the Bozeman, Gallatin County, school district, and that is a matter for the county superintendent of schools to determine in the first instance (Section 966, Rev. Codes, 1921), then they are entitled to instruction free of charge in the public schools of that district. The

fact, however, that other districts are paying for their transportation to these schools and that their parents refuse to allow them to be included in the census of children residing in the Bozeman school district, is especially significant. On the other hand, if these children be actual residents of school districts in Meagher County and Broadwater County, there cannot be any doubt about their status here. The board of trustees not only has the power to admit non-resident children to the public schools in the district of which it has charge, if in its judgment there is sufficient room, but it has the power and it is its duty to determine the rate of tuition of such non-resident children. If the county treasurer of the county in which they reside is in a position to transfer to the district which receives them an amount equal to the tuition fixed, well and good; if not, the parents or guardians must be prepared to pay such part thereof as is not met out of the public funds. (Peterson v. School Board, 73 Mont. 442.)

The payment of taxes levied upon property within the school district belonging to the non-resident pupil or his parent does not affect this situation in the slightest.

For school census purposes, under the provisions of Section 1051, Revised Codes, 1921, as amended by Section 1 of Chapter 118, Laws of 1927, the residence of the parents or guardians is the residence of the children, except in a case where the children have never actually resided in the district in which their parents or guardians reside.