

Opinion No. 64

Schools and School Districts—
Residence of Pupils Defined—
Payment of Transportation—Payment
of Tuition

Held: That the residence of an elementary school pupil for purposes of payment of tuition and of transportation shall be that place where the pupil resides with his family for at least eighty days during the calendar year, when school is not in session.

February 8, 1952.

Miss Mary M. Condon
Superintendent of Public Instruction
State Capitol Building
Helena, Montana

Dear Miss Condon:

You have requested my opinion concerning the applicable statute for determining the residence of pupils for the payment, by school districts, of tuition and transportation.

Section 75-1630, Revised Codes of Montana, 1947, as amended by Chapter 207, Laws of 1951, authorizes the attendance of pupils of the elementary schools in districts other than that of residence and states:

"For the purpose of determining the residence of such child the place where the father resides and earns the major portion of the living for his family, shall be used."

This quoted portion of Section 75-1630 was first made a part of the section by Chapter 203, Laws of 1943, and the 1951 amendment to the section did not alter this portion of the statute.

Section 75-3405, Revised Codes of Montana, 1947, was amended by Chapter 189, Laws of 1951, and the new matter added to the section included:

"For the purposes of this act (transportation statute) and also for the purposes of paying tuition, residence shall be defined as that place where the applicant resides with his family for at least eighty (80) days

during the calendar year, when school is not in session."

It is apparent that the last definition of residence for elementary school pupils was given to us by the amendment above quoted to Section 75-3405, Revised Codes of Montana, 1947. While the 1951 legislature amended both sections, yet no change was made in Section 75-1630, pertaining to residence and this definition must be considered as having been enacted in 1943. Recognition of such a construction is found in *State ex rel. Henderson v. Dawson County*, 87 Mont. 122, 286 Pac. 1265, where it was said:

"Where a section or a part of a section of a law is amended, it is not to be considered as repealed and re-enacted in its amended form, but the portions which are not altered are to be considered as having been the law from the time they were enacted."

A rule that is also helpful in construing these conflicting statutory provisions, is found in *Nichols v. School District No. 3*, 87 Mont. 181, 287 Pac. 624, in which case the court stated:

"In the construction of an amendatory Act it will be presumed that the legislature, in adopting it, intended to make some change in the existing law . . . and the court will endeavor to give some effect to the amendment."

In view of the fact that the legislature, by its amendment to Section 75-3405 gave a new rule for the determination of a child's residence and the new rule is inconsistent with the rule which had been the law for years before, it must be held that the latest definition in time controls, and the prior rule was repealed by implication.

It is therefore my opinion that the residence of an elementary school pupil for the purposes of payment of tuition and of transportation shall be that place where the pupil resides with his family for at least eighty days during the calendar year, when school is not in session.

Very truly yours,
ARNOLD H. OLSEN
Attorney General