

Opinion No. 28

SCHOOLS AND SCHOOL DISTRICTS; Tuition payment for child in institution out of state—Sections 75-1630, 75-4230, 10-615, and 80-816, Revised Codes of Montana, 1947.

HELD: A Montana school district is not liable for, nor may it make payment of tuition to a school district in another state for a child committed by a Montana court to an institution in another state.

January 17, 1964

Mr. Robert T. Hoover
County Attorney
McCone County
Circle, Montana

Dear Mr. Hoover:

You have requested my opinion as to whether a school district

in your county is liable for the payment of tuition to a school district in North Dakota for a child under eighteen years of age who was committed to an institution in North Dakota and who attends a public school in North Dakota.

The attendance of children in public elementary schools in districts outside of the district in which they reside is regulated by statutes which differ from those pertaining to the attendance of high school students in counties outside of the resident county. Section 75-1630, R.C.M., 1947, as last amended by Chapter 107, Laws of 1963, provides in part as follows:

“Children may attend public elementary schools in a district in the county outside of the district in which they reside, or in a district in an adjoining county, or in a district in a county in another state when the district in such other state adjoins the district in which they reside, or is situated in a county in such other state, which county adjoins the state of Montana, 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.”

From the above quoted, it appears that this statute applies in part to a transfer of attendance to a school in another state when proper application has been made, permission granted, and the geographical requirement is satisfied. It is not related to a commitment of a child by a court of competent jurisdiction.

The attendance of high school pupils in a school outside of the state of Montana is permitted under the provisions of Section 75-4230, R.C.M., 1947, which also requires an application to the county superintendent of schools, who may grant the transfer.

This statute limits the payment of tuition as follows:

“No payment shall be made for attendance in another state except where such attendance is in a high school in a county adjacent to the county of the student’s residence.”

A reading of the whole statute negatives the interpretation that it is applicable to students who have been committed to institutions outside of Montana.

It is true that the amendment made by Chapter 107, Laws of 1963, of Section 75-1630, R.C.M., 1947, states that a dependent and a neglected child or a juvenile delinquent committed to a licensed child care institution in the state of Montana is an obligation of the resident district for the payment of tuition to the district receiving such child. This amendment is limited to an institution within Montana and thus has no application to payment of tuition for a child committed to an institution in another state.

The expense attending the care, education, training, and safe-keeping of a boy committed to the Montana State Industrial School is made the obligation of the county of which the boy is committed by Section 80-816, R.C.M., 1947. No reference is made in the statute to a commitment outside of Montana.

The support of a delinquent child committed by the court to custody, other than that of his parents, becomes a charge of the county or an appropriate division thereof (Section 10-615, R.C.M., 1947). However, under the statute the court may require payment in whole or in part for the support of the delinquent child from the parents. No reference is made in the statute to the payment of tuition to any school.

If the custody of a dependent child is awarded to any association or individual, the child becomes a ward of the association or individual (Section 10-510), and the support of the child, as provided by Section 10-507, R.C.M., 1947, is paid by the State Department of Welfare, the county, and the parents, if able. No mention is made of payment of tuition to any school district or private institution.

While other statutes also provide for the support and maintenance of dependent children or juveniles committed to institutions within the state of Montana, the board of trustees of a school district may not make a payment of tuition without specific statutory authority. In exercising the management of a district, a school board has only such powers as are expressly conferred by statute

and as are necessarily implied in the exercise of those expressly conferred. *McNair v. School District No. 1*, 87 Mont. 423, 288 Pac. 188.

Therefore, it is my opinion that a Montana school district is not liable for, nor may it make payment of tuition to a school district in another state for a child committed by a Montana court to an institution in another state.

Very truly yours,

FORREST H. ANDERSON
Attorney General