

VOLUME NO. 38

OPINION NO. 110

SCHOOL BOARDS - Individual tuition for high school pupil;
SCHOOL DISTRICTS - Individual tuition for high school pupil;
MONTANA CODE ANNOTATED - Sections 20-5-303, 20-5-313.

HELD: Individual tuition for a high school pupil attending a high school outside of his district of residence may not be waived on the ground that the parent pays \$200 or more in district and county

property taxes during the preceding school fiscal year for the benefit and support of the district in which the pupil will attend school.

22 October 1980

Robert J. Brooks, Esq.
Powder River County Attorney
Powder River County Courthouse
P.O. Box 345
Broadus, Montana 59317

Dear Mr. Brooks:

You have requested my opinion on the following question:

Whether individual tuition for a high school pupil must be waived when the parent pays \$200 or more in district and county property taxes during the preceding school fiscal year for the benefit and support of the district in which the pupil will attend school.

Montana law allows high school pupils to attend high schools outside of their districts of residence. You have described a situation involving circumstances which are governed by section 20-5-313, MCA. That statute provides in pertinent part:

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate fixed by the trustees.

Section 20-5-313, MCA, contains no provision for the kind of tuition waiver in question. Section 20-5-303, MCA, which covers individual tuition for elementary school pupils, does expressly provide for the waiver of elementary tuition, "when the parent of the child paid \$200 or more in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school."

In my opinion, the tuition waiver which is available to parents of elementary pupils pursuant to section 20-5-303, MCA, is not available to parents of high school pupils who attend high schools outside of their districts of residence. By its terms, section 20-5-303, MCA, applies to elementary school pupils only. Nothing in that section reflects legislative intent to encompass high school pupils as well. As noted above, section 20-5-313, MCA, which corresponds to section 20-5-303, MCA, but deals expressly with high school pupils, is silent as to tuition waivers. In construing a statute, what has been omitted may not be inserted. Montana Department of Revenue v. American Smelting and Refining Co., 173 Mont. 316, 324, 567 P.2d 901 (1977). However, nothing in these sections prohibits the trustees from setting a rate for tuition that takes into account the taxes previously paid to that district.

It should be noted that this opinion concerns high school tuition situations governed by section 20-5-313, MCA, and has no effect on tuition agreements approved by the trustees of the district where the child wishes to attend school and the trustees of the child's district of residence pursuant to section 20-5-311, MCA.

THEREFORE, IT IS MY OPINION:

Individual tuition for a high school pupil attending a high school outside of his district of residence may not be waived on the ground that the parent pays \$200 or more in district and county property taxes during the preceding school fiscal year for the benefit and support of the district in which the pupil will attend school.

Very truly yours,

MIKE GREELY
Attorney General