

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 103

EDUCATION - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SCHOOL BOARDS - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SCHOOL DISTRICTS - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
SUPERINTENDENT OF PUBLIC INSTRUCTION - Attendance standards and tuition requirements for Canadian and other out-of-district elementary and high school students;
MONTANA CODE ANNOTATED - Sections 1-2-107, 20-3-324(23), 20-5-303, 20-5-305, 20-5-312, 20-5-313(2);
MONTANA CONSTITUTION - Article X, section 8;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 69 (1984).

HELD: A school district's board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the

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trustees choose to charge tuition, sections 20-5-305 and 20-5-312, MCA, must be referred to in setting the amount of tuition.

2 August 1988

Susan Loehn
Lincoln County Attorney
Lincoln County Courthouse
Libby MT 59923

Dear Ms. Loehn:

You have asked my opinion on several issues which I have phrased as follows:

1. May the trustees of a school district accept as elementary and high school students Canadian residents who wish to attend school in Montana?
2. If the trustees have such authority, are they required to charge tuition of Canadian and other out-of-district students, or may the trustees waive tuition requirements?
3. If the trustees charge tuition, which statutes govern the tuition rates to be set?

You explain in your request that there is a practice in Lincoln County of allowing Canadian residents to cross the international border and attend elementary and high school in Montana under local agreements which waive tuition requirements. This practice is also followed by other Montana counties bordering Canada and is reciprocated by Canada when Montana school children attend Canadian schools. The Office of Public Instruction condones these agreements, which have been in effect for over 40 years.

Your first question is whether the school board of trustees has the authority to accept as elementary and high school students Canadian residents who wish to attend school in Montana. There are no United States-Canadian treaties or formal agreements addressing this matter, and Montana's statutes do not specifically address the issue. However, Montana's statutes contain general provisions authorizing the local school boards of trustees to exercise their discretion in permitting

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attendance of out-of-district students and in setting the tuition for those students. This delegation of authority gives the trustees considerable discretion within the confines of the provisions of Title 20, MCA. State ex rel. Ronish v. School District, 136 Mont. 453, 348 P.2d 797 (1960).

The provisions of Title 20, MCA, have as their foundation Article X, section 8 of the Montana Constitution, which vests supervision and control of schools in each school district to an elected board of trustees. Though the board of trustees is statutorily directed to follow the rules of the superintendent of public instruction and the policies of the board of public education (§ 20-3-324(23), MCA), the trustees are given considerable discretion in their acceptance of out-of-district students and administration of the tuition provisions.

For example, section 20-5-303, MCA, addressing attendance and tuition agreements for elementary students, states in part:

(1) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. [Emphasis supplied.]

Sections 20-5-312(3)(c) and 20-5-313(2), MCA, address acceptance and tuition for out-of-district high school students. Section 20-5-313(2), MCA, states, 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

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attendance is approved, the parent shall pay tuition at the rate fixed by the trustees.

Section 20-5-312(3)(c), MCA, states:

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

....

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive[.] [Emphasis supplied.]

The above-quoted statutes specifically ensure that the board of trustees is permitted to exercise discretion on the issues of attendance and tuition.

Hence, based upon the broad grant of authority given to the trustees, I conclude that the trustees may accept Canadian residents as students. I also find that the trustees may waive their tuition, but note the provision in section 20-5-303, MCA (affecting elementary students), that requires the trustees to uniformly waive a like amount of all tuition payments, a requirement which includes all out-of-district elementary students. (There is no such requirement of uniformity in the tuition agreement statutes for high school students.)

Your final question is: If the trustees charge tuition, which statutes govern the tuition rates to be set? Section 20-5-305, MCA, sets out the formula to be used by the attended district in setting the amount of tuition to be paid for elementary students. Section 20-5-312, MCA, sets out the formula to be used by the attended district in setting the amount of tuition to be paid for high school students. I recognize that these statutes are not specifically applicable to the agreements reached between local Montana boards of trustees and their Canadian counterparts. However, unless a contrary intention appears, statutes relating to the same subject matter should be interpreted consistently. § 1-2-107, MCA; State ex rel. McHale v. Ayers, 111 Mont. 1, 105 P.2d 686 (1940); 40 Op. Att'y Gen. No. 69 at 273 (1984).

THEREFORE, IT IS MY OPINION:

A school district's board of trustees may, in its discretion, accept as elementary and high school students Canadian residents who wish to attend

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school in Montana. The trustees are also authorized to exercise discretion in granting a waiver of tuition to these and all other out-of-district students. If the trustees choose to charge tuition, sections 20-5-305 and 20-5-312, MCA, must be referred to in setting the amount of tuition.

Very truly yours,

MIKE GREELY
Attorney General