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VOCATIONAL SCHOOL—BOARD OF EDUCATION UNAUTHORIZED TO ADMIT NON-RESIDENT PUPILS FREE OF CHARGE—HOW AND WHEN SCHOOL DISTRICT MAY AUTHORIZE PUPIL'S INSTRUCTION IN FOREIGN DISTRICT—BASIS FOR FIXING TUITION CHARGES FOR NON-RESIDENT.

*SYLLABUS:*

1. *A board of education which maintains trade or vocational schools or departments, a part or all of the expense of which is met from district funds, is without authority to admit non-resident pupils to such schools, free of charge.*

2. *A school district is required by law to pay the tuition of its resident youths of school age who attend a trade or vocational school maintained by a public board of education in another district, upon assignment by the county, city or exempted village superintendent of schools of the district in which he resides, provided similar work is not offered in the district of his residence.*

3. *There is no authority for the payment from public funds of the tuition of pupils in trade or vocational schools of a district other than that of the pupil's residence, unless the pupil attends such school upon assignment of the superintendent of the schools of the district of his residence.*

4. *The amount of tuition properly chargeable against non-resident pupils who attend trade or vocational schools, should be based upon the proportionate cost of the service rendered, to the district maintaining the school.*

COLUMBUS, OHIO, March 28, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication with which is enclosed a letter addressed to you from the Director of Vocational and Industrial Education of the Toledo City School District, wherein you are requested to secure my opinion with reference to the matters discussed in the letter. The letter of the Director of Vocational and Industrial Education of the Toledo City School District follows:

"There is a question concerning the collection of tuition fees from the non-resident pupils in the vocational school to which I would like to call your attention.

For the past few years, we have had several students each year in attendance at the vocational school who lived outside of the city school district, and therefore have been charged tuition.

The vocational school offers instruction in a group of specialized trade activities on a basis that conforms to the requirements of the State Board of Vocational Education for State aid under the Smith-Hughes Act. This aid amounts to from 40 to 45 per cent of the teaching cost. This school not only offers courses on a full-time (six clock hour) day, but also provided co-operative courses where students work and go to school on a half-time basis. Some of these outside students, on account of economic reasons, have been compelled to enter the Co-op. courses.

The township high schools in Lucas County do not offer trade subjects on a vocational basis, probably with one exception, that of agriculture, (A subject which we cannot, and do not offer). With the opening of the

township high schools, there has developed a feeling in the township boards to refuse to pay tuition of students who wish to attend Toledo high schools. This naturally forces the attendance at the township centralized school. No exception to this ruling is made for students who desire to secure this specialized training which our vocational school offers and which is not offered in the county schools.

It is quite apparent that the laws require that the board of education charge tuition fee for all students who reside outside of the school district.

With the above background before you, I would ask that you secure an opinion from the Attorney General on the following questions:

1st: Can a township board be compelled to pay tuition for a qualified student residing in their district to attend a vocational school which is supported in part, by State Aid, under the Smith-Hughes Act in an adjoining township or school district, and when the township high school does not offer such courses?

2nd: What should be the basis of fixing the tuition charges for a vocational school wherein a part of the teaching cost is paid by the State of Ohio, under the Smith-Hughes Act?

3rd: What should be the basis of fixing tuition charges as suggested in question two, for those cases where students are in school only half time as in the case of Co-op. students, or only four hours a week, as the case of the continuation school?"

This inquiry has to do with a part of the public school system of the State maintained in the promotion of vocational education, in co-operation with the federal government.

By the terms of an Act of Congress, (Chapter 2, Title 20, U. S. C.) enacted in 1917, commonly known as the Smith-Hughes Law, provision is made for the allotment to each state of the union, annually of certain sums of money from the federal treasury to be expended by the State in the promotion of vocational education. The allotment to any state is conditioned upon the acceptance by that state of the provisions of the act, in the manner provided for therein, and the designation or creation by the state of a state board, with all necessary powers to co-operate in the administration of the act with the federal board for vocational education, in the manner provided for therein.

Soon after the passage of the aforesaid act of Congress the General Assembly of Ohio, passed an act (107 O. L. 579) entitled: "An Act to create a State Board of Education, and to accept the provisions of the act of Congress providing for national aid for vocational education and to provide for carrying the same into effect."

The aforesaid act of the General Assembly, codified as Sections 367-1, et seq., of the General Code, together with subsequent amendments thereto, provides for the creation of a State Board of Education, with power to co-operate with the Federal Board for Vocational Education in the administration of the Smith-Hughes Law, and to that end "to formulate plans for the promotion of vocational education in such subjects as an *essential and integral part of the public school system of education in Ohio.*"

(Italics the writer's).

Independent of the Federal Board for Vocational Education and the State Board for Vocational Education, each district board of education in the State possesses the power by general law, to establish and maintain, as a part of its school system, trade schools and schools or departments for imparting instruction

in vocational subjects, such as agricultural, domestic science, commercial and home economics subjects.

The first general law extending the power to boards of education to maintain, as a part of their school system, trade and vocational schools, was enacted in 1904 (97 O.L. 364), and now appears in the law as Section 7722, General Code.

As early as 1887, boards of education in certain cities, were extended like power (84 O. L. 92).

Under the plan now in operation, as formulated by the State Board of Vocational Education for the purpose of securing the benefits of the Smith-Hughes Law and to co-operate with the Federal Board for Vocational Education in the administration of that law, any board of education which establishes and maintains trade schools or vocational schools or departments, as a part of its school system, receives a great part of the expense of maintaining those schools from Federal and State moneys.

Only a portion of the cost of maintaining trade and vocational schools, where such schools are maintained, is borne from the treasury of the district in which the school is maintained. The remainder of the expense of maintaining such schools is borne from allotments of Federal and State moneys.

Although trade schools and vocational schools, when maintained by a board of education, are an integral part of the public school system of the State, it cannot be said, in my opinion, that they are either elementary schools or high schools, as the terms are used in the laws relating to public schools. It is apparent that the Legislature did not consider the statutes extending to boards of education the power to establish elementary and high schools sufficiently broad to empower the establishment and maintenance of trade and vocational schools, and hence, specifically extended that power by legislation to that end.

Although a broad interpretation of Section 7649, General Code, wherein a high school is defined as one of a higher grade than an elementary school, and wherein authority is granted for the instruction and training in commercial and industrial subjects in high schools, would justify its being interpreted to include work in vocational and trade subjects, the general purport of what is termed a high school is a school where the courses offered and the instruction and training given are of an academic nature rather than the practical and objective instruction and training given in the present day vocational and trade schools which are operated as separate units from that of the regular high school and maintained in great part with Federal and State aid.

For that reason, the laws relating to the payment of tuition of non-resident students attending elementary and high schools of a school district are not applicable to those students attending trade and vocational schools maintained and operated as public school units through the munificence of the Federal and State governments in the administration of the Smith-Hughes Law and the Act of the Legislature of Ohio accepting the benefits of that Act.

Inasmuch, however, as a portion of the cost of operating such vocational schools and trade schools is borne from the funds of the district in which the schools are maintained, under the plan now in operation, non-resident pupils cannot lawfully be extended the advantages of those schools, free of charge.

In my Opinion No. 884, addressed to the Prosecuting Attorney of Williams County, under date of September 18, 1929, it is held :

“A board of education is without authority to extend the privileges of the schools of its district free of charge to non-resident pupils.”

Section 7682, General Code, provides in part :

“Each board of education may admit other persons upon such terms or upon the payment of such tuition within the limitations of other sections of law as it prescribes. \* \* \* ”

The manner of computing the amount of tuition which a non-resident elementary school pupil should pay is fixed by the terms of Section 7736, General Code. Similar provisions are made with reference to non-resident high school pupils, by Section 7747, General Code. There is no specific provision made with reference to the amount of tuition or the manner of computing the tuition which should be paid by a non-resident pupil attending trade or vocational schools. The only statutory provisions touching this subject are found in Sections 7748 and 7764, General Code. Section 7748, General Code, provides in part:

“\* \* \* If a pupil attends a vocational school maintained by a public board of education in another district, upon assignment by the county, city or exempted village superintendent of schools of the district in which he resides, his rights shall be the same as if he were eligible to take high school training outside of his own district, provided similar work is not offered in the district of his residence.”

A similar provision is found in Section 7764, General Code.

From the foregoing, it appears clear that a pupil has the right to attend a vocational school in another district, at the expense of the district of his residence, if similar work is not offered in the district of his residence and he has been properly assigned to the other school by the county, city or exempted village superintendent of schools of the district in which he resides.

Provision is made by Sections 7747 and 7748, General Code, that tuition of pupils who are eligible for admission to high school, and who reside in districts in which no high school is maintained, or in which a high school of the grade to which the pupil is entitled to admission is not maintained in the district, must be paid by the district of his residence. Inasmuch as the rights of pupils attending vocational schools, under circumstances as stated in that portion of Section 7748, General Code, quoted above, are the same as the rights of high school pupils, it clearly follows that pupils attending vocational schools, under the circumstances named, are entitled to have their tuition paid by the district in which they reside.

While the said Section 7748, General Code, fixes the rights of pupils attending vocational schools in other districts, it does not, in my opinion, mean that the amount of tuition to be paid shall be computed in the same manner as would the tuition to be paid by a non-resident high school pupil, nor is there any provision made by statute directing how the tuition of such pupils shall be computed.

Inasmuch as the statute does not fix the amount of tuition to be paid by non-resident pupils attending a vocational or trade school, it is governed by Section 7682, General Code, which provides that the attendance shall be upon the payment of such tuition as is prescribed by the board of education of the district where the pupil attends school. That does not mean that the board of education is empowered to arbitrarily fix a rate to be paid by the pupil, but that the rate should be fixed equitably and in proportion to the cost of the service.

In my opinion, the amount of tuition that should be paid, should be based upon the proportionate cost to the district of the service extended to the pupil. That would involve taking into consideration the amount of money expended from the district treasury for the maintenance of the school and the proportionate time that the pupil attended school, involving in all cases consideration of questions of

fact pertaining to each individual instance, and becomes purely a matter for computation.

Unless, however, a pupil attends a vocational or trade school in another district by assignment of the superintendent of schools, there is no authority for the district of his residence to pay his tuition, and in those cases, I am of the opinion that, while the district where he attends school should charge tuition for his attendance, that tuition will necessarily have to be paid by him or his parents. I apprehend, however, that in all cases where it would appear that the pupil was capable of advantageously receiving the instruction and training given in the trade or vocational school and he and his parents wish him to attend that school, the superintendent of schools will no doubt make the assignment.

In specific answer to the questions submitted, therefore, I am of the opinion:

First, a board of education is required by law to pay the tuition for a qualified student residing in its district who attends a vocational or trade school, supported in part by State aid under the Smith-Hughes Act, in another district, upon assignment of the superintendent of schools, when the schools of the pupil's residence do not provide similar work.

Second, as there is no rule fixed by statute, for the determination of the amount of tuition to be charged against a non-resident pupil who attends a vocational or trade school maintained by a school district in co-operation with the Federal and State governments, the amount of that tuition is controlled by Section 7682, General Code, which provides that a board of education may admit non-resident pupils upon such terms and the payment of such tuition as it prescribes. The amount prescribed should be based on the proportionate cost to the district of the service rendered. To prescribe any greater amount than this would, in my opinion, be an abuse of discretion on the part of the board prescribing the same.

While it is not the province of the Attorney General to lay down an administrative rule to be followed in all cases by boards of education in prescribing the amount of tuition to be charged non-resident pupils, in cases where the Legislature has failed to prescribe a rule, I might suggest that reasoning by analogy from the rule prescribed by the Legislature in Sections 7736 and 7747, General Code, for determining the tuition to be paid by non-resident elementary and high school pupils, it would seem equitable to ascertain the tuition to be charged non-resident pupils attending trade or vocational schools, by dividing the total expense of conducting the school attended, exclusive of permanent improvements and repairs, said total expense to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting such school, by the net annual enrollment in the class of school attended by the pupil, such amount to be computed by the school month, and students attending school upon a full time basis should be charged the monthly tuition charge so found. Those pupils who attend the school upon a part time basis should have the tuition charge apportioned equitably, in the proportion that their schedule of attendance bears to full time. In computing such total expense of conducting a trade or vocational school of the district, the amount contributed thereto by the State and Federal governments, should be deducted from the gross expense of conducting such school.

Third, the answer to your third question is contained in the answer to the second, as stated above.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*