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1. PUPILS RESIDENT OF ANOTHER DISTRICT—BOARD OF EDUCATION OF SCHOOL DISTRICT—AUTHORIZED TO ADMIT PUPILS PURSUANT TO CONTRACT MADE WITH DISTRICT OF RESIDENCE, OR BY AGREEMENT WITH PARENTS OF CHILDREN—SECTION 4855-3 G. C.
2. NON-RESIDENT PUPILS ADMITTED TO SCHOOLS OF DISTRICT WITHOUT CONTRACT—DUTY OF BOARDS WHO RECEIVED THEM TO COLLECT TUITION FROM PARENTS OR GUARDIANS OF PUPILS— RATES FIXED BY SECTION 4848-5 G. C.—UNAUTHORIZED ATTENDANCE —SECTION 4855-3b G. C.
3. FAILURE TO COLLECT TUITION—SECTION 4855-3b G. C.— NON-RESIDENT PUPILS— ATTENDANCE—DISCRETION, BOARD OF EDUCATION OF EACH DISTRICT.
4. NON-RESIDENT PUPILS—AGREEMENT ON PART OF PARENTS OR GUARDIANS—FAILURE TO PAY TUITION —BOARD OF EDUCATION OF DISTRICT THAT RECEIVED PUPILS, WOULD HAVE RIGHT OF ACTION AGAINST PARENTS OR GUARDIANS TO COLLECT TUITION AT RATES FIXED BY SECTION 4855-3b G. C.

SYLLABUS:

1. The board of education of a school district is authorized to admit pupils resident of another district either pursuant to a contract made with the district of residence, pursuant to Section 4855-3, General Code, or by agreement with the parents of such children.

2. If non-resident pupils are admitted to the schools of a district without a contract with the district of their residence, it is the duty of the boards receiving them to collect from the parents or guardian of such pupils tuition at the rates fixed in Section 4848-5, General Code, and a failure to collect such tuition will constitute unauthorized attendance as to such pupils as defined by Section 4855-3b, General Code.

3. When non-resident pupils have been admitted to the schools of a district without a contract with the district of their residence, and the board of education so receiving them has failed to collect tuition from the parents or guardian of such pupils, they may be admitted for a subsequent semester, but the failure to collect tuition will constitute unauthorized attendance as to such pupils as defined by Section 4855-3b, General Code. The decision as to whether or not to permit non-resident pupils to attend the schools of a district without payment of tuition thus constituting an unauthorized attendance lies within the sound discretion of the board of education of each district.

4. Where non-resident pupils have been admitted to attendance in a school, without any agreement with the board of education of the district of residence, but pursuant to an agreement on the part of the parents or guardian of such pupils to pay their tuition, the board of education of the district receiving such pupils would have a right of action against said parents or guardian for the collection of such tuition at the rate fixed by Section 4855-3b, General Code.

Columbus, Ohio, July 19, 1951

Hon. Benson L. Owens, Prosecuting Attorney
Jackson County, Jackson, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"I respectfully request your opinion as to the right of the board of education of a local school district to collect tuition from the parents of children of an adjoining school district, who were permitted to attend the said local school and who were billed for the costs at the end of each school semester, but insistently refused to pay the amount of the bills rendered.

"The facts briefly are as follows: The Coal Local Board of Education of Coal Local School District during the school year 1949-50 permitted pupils to attend the Coal School from an adjoining district. No requirement of payment of tuition in advance was made by the board. On October 29, 1949, the parents of the children in question, were notified by letter that they would be expected to pay tuition, and that the tuition would be figured at the same rate of cost as the cost for pupils of the district in question. The letter further notified them that they would be billed at the end of each semester. Following receipt of said letter by the parents, the payment of tuition was verbally agreed to. Upon rendition of bills; however, the parents of the pupils in

question refused to pay the same, claiming that they were entitled to free education. The pupils in question are residents of Jackson Township, Jackson County, Ohio, and were not residents of the Coal Local School District.

“The situation shown by the facts above, raises several questions as follows:

“First: In view of the language used in the last paragraph of section 4838-2 of the Ohio General Code, should the board of Education of a local school district admitting pupils from another district, require the parents of such pupils to pay the tuition for the ensuing semester in advance?

“Second: If it is not considered necessary for payment to be required in advance, should said pupils be admitted for a second semester if the tuition for the first semester has not been paid?

“Third: If it is not considered necessary to require payment in advance in any event, and, if when bills are rendered in such cases for tuition, the parents of the pupils refuse to pay such bills, does the Board of Education of a Local School District have legal power to file suit to enforce payment of the amount of the tuition decided to be due, provided that the amount for which suit is brought, is figured on the basis of the actual cost of schooling to the pupils of a district in question?”

The statutes of Ohio contain several provisions bearing on the attendance of pupils in a district other than that of their residence. Section 4855-3, General Code, provides in part as follows:

“The board of education of any city, exempted village or local school district may contract with the board of another district for the admission or transportation or both, of pupils into any school in such other district, on terms agreed upon by such boards within the limitations of law. * * *”

Section 4855-3b, General Code, reads as follows:

“When a pupil attends school, pursuant to the provisions of section 4855-3 of the General Code, in a district other than the district in which he is a school resident, tuition for such attendance shall be credited and paid in the manner provided in sections 4848-4 and 4848-5 of the General Code.

“When the board of education of a city, exempted village or local school district admits to the schools of its district any non-resident pupil for whose attendance tuition *is not an obligation, as provided by law*, of the board of education of the district of the pupil's residence, such board of education shall collect tuition,

for the attendance of such pupil, from the parents or guardian of the pupil and the *amount of tuition collected shall be not more nor less than the amount computed in the manner prescribed by section 4848-5 of the General Code.*

“If a board of education admits to the schools of its district any non-resident pupil for whose attendance tuition is not an obligation of the board of education of the district of the pupil’s residence, and fails to collect tuition, as required by the provisions of the second paragraph of this section, from the pupil’s parents or guardian, the attendance of such pupil shall be deemed to be unauthorized attendance. When a school district provides instruction for a non-resident pupil whose attendance is unauthorized attendance, as defined by this section, the membership of such pupil shall not be included in the membership figure used in determining the amount of state support to be paid to such district under the provisions of the foundation program act. The membership of such pupil shall be credited, however, to the school district in which such pupil is a legal school resident.” (Emphasis mine.)

I call your particular attention to the provisions of the section last quoted, to the effect that a board of education which admits to its schools any non-resident pupil for whose attendance tuition is *not an obligation as provided by law, of the board of the district of residence* (meaning that no contract has been made by the boards concerned) *shall collect tuition from the parents or guardian* of the pupil, the amount of tuition collected to be *not more or less* than the amount computed as provided by Section 4848-5 of the General Code.

Note that in case the board fails to collect the tuition from the pupil’s parents the attendance of such pupil shall be deemed to be unauthorized attendance and such pupil will not be included in the membership figure used in determining the amount of state aid to be paid to such district under the Foundation Program Act.

Section 4855-4, General Code, requires a report to be made showing which non-resident pupils are not provided for by contract between the boards of education.

Section 4848-5, General Code, provides in detail the basis upon which tuition is to be paid for pupils attending school in a district other than their residence. The first sentence of this section reads as follows:

“Pursuant to law, a pupil may attend school outside his district of school residence, and for such pupil his board of education shall pay tuition not more than that which shall be computed

as follows: From the total expenditures for conducting the schools of the district attended there shall be deducted the amounts expended for the following purposes: capital outlay; permanent improvements; debt service; transportation; operation of school lunch rooms; tuition to another school district; operation of summer school, part-time schools and evening schools; and maintenance of playgrounds; and there shall also be deducted that portion of the salary of a vocational teacher for which the district receives state and federal funds. * * *

Then follows a rather elaborate formula for such computation. Later on in the section it is provided that the clerk of the board of the district of attendance is to compute and certify to the district of residence the amount of tuition called for by this section for the pupils who are in attendance pursuant to the contract, and the Superintendent of Public Instruction, upon ascertaining that the computation is correct, shall make the adjustment between the two districts by deducting the amount from the state funds allocated to the district of residence and adding the same to the amount allocated to the district attended.

Section 4838-2, General Code, to which your letter refers, contains the following provision:

“The board of education of a city, exempted village or local school district may admit other persons to the public schools of its respective district *upon the payment of tuition within the limitation of law.*”
(Emphasis mine.)

The words, “upon the payment of tuition within the limitations of law”, would seem to apply particularly to a case where the attendance of the pupil is not covered by a contract with the board of education of his residence and where it is made the duty of the board to collect the tuition from the parents of the pupil as provided in Section 4855-3b, supra. The words, “upon the payment” clearly imply that payment should be insisted on in advance. Until such payment is made, the board has no duty or right to admit the pupil unless it is willing that such attendance should be considered as “unauthorized attendance” as designated by Section 4855-3b, supra. The words, “within the limits of law”, refer to the schedule of rates set out in Section 4848-5, to which reference has been made.

There might seem to be some inconsistency between Section 4638-2 supra, which provides for tuition to be charged “within the limitation of the law”, and Section 4855-3b supra, in that it provides that the rate to be

charged shall be "not more nor less than the amount computed * * * by Section 4848-5 * * *". This inconsistency must be resolved in favor of Section 4855-3b, which is later in enactment.

The language of the statutes quoted might seem to impose a mandatory duty on the board which admits non-resident pupils under the circumstances stated in Section 4855-3b supra, but it is my opinion that the only penalty which such board must suffer in case it fails to collect the tuition required by the law, is that upon making its report under Section 4855-4, General Code, showing the pupils who were in unauthorized attendance, it will suffer a loss in the distribution of the school foundation fund.

Your final question relates to the right to enforce payment of the tuition from the parents of the pupils in case they refuse to pay. Under the law a board of education has the right to contract and be contracted with, and to sue and be sued, and I see no reason why an action could not be maintained to collect the unpaid tuition. If that action is taken, it should not be on the basis of the actual cost, but on the basis of the rates fixed by Section 4848-5, General Code. This, because the parents or guardians as well as the board, are presumed to know the law, and to send and receive the pupils on the terms prescribed by the law.

In specific answer to your questions it is my opinion:

1. The board of education of a school district is authorized to admit pupils resident of another district either pursuant to a contract made with the district of residence, pursuant to Section 4855-3, General Code, or by agreement with the parents of such children.

2. If non-resident pupils are admitted to the schools of a district without a contract with the district of their residence, it is the duty of the boards receiving them to collect from the parents or guardian of such pupils tuition at the rates fixed in Section 4848-5, General Code, and a failure to collect such tuition will constitute unauthorized attendance as to such pupils as defined by Section 4855-3b, General Code.

3. When non-resident pupils have been admitted to the schools of a district without a contract with the district of their residence, and the board of education so receiving them has failed to collect tuition from the parents or guardian of such pupils, they may be admitted for a subsequent semester, but the failure to collect tuition will constitute unauthorized attendance as to such pupils as defined by Section 4855-3b,

General Code. The decision as to whether or not to permit non-resident pupils to attend the schools of a district without payment of tuition thus constituting an unauthorized attendance lies within the sound discretion of the board of education of each district.

4. Where non-resident pupils have been admitted to attendance in a school, without any agreement with the board of education of the district of residence, but pursuant to an agreement on the part of the parents or guardian of such pupils to pay their tuition, the board of education of the district receiving such pupils would have a right of action against said parents or guardian for the collection of such tuition at the rates fixed by Section 4855-3b, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General