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SCHOOLS AND SCHOOL DISTRICTS: Tuition charged of parents of nonresident pupils.

A board of education of a school district has discretionary authority as to whether to admit a nonresident pupil in a school within the school district. If the board of education accepts a nonresident pupil, it must impose a tuition charge, but the charge need not be the maximum rate set forth in section 582 of the School Code of 1955.

Where the tuition for a nonresident pupil is paid by the parents of the pupil rather than by the school district in which the pupil resides, the board of education of the school district where the pupil attends school need not charge tuition in the amount of the full per capita operating cost.

Opinion No. 5112

December 23, 1976.

Honorable Daniel S. Cooper
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on a question which may be phrased as follows:

Where the tuition for a nonresident pupil is paid by his parents rather than by the school district in which he resides, must the board of education of the school district in which the pupil attends charge tuition in the amount of the full per capita operating costs?

In responding to your inquiry, it must first be noted that MCLA 340.582; MSA 15.3582 provides as follows:

"The board of any district may admit to the district school nonresident pupils and shall determine the rates of tuition of such pupils and shall collect the same. Tuition for grades kindergarten to 6, inclusive, shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. Tuition for grades 7 to 12, inclusive, shall not exceed 12½% more than 115% of the operation cost per capita for the number of pupils in membership in grades kindergarten to 12, inclusive. In districts not maintaining grades above grade 8, the tuition shall not exceed 25% more than the operation cost per capita for the number of pupils in membership in grades kindergarten to 8, inclusive. The operation costs and membership so used shall be those of the preceding fiscal year. The per capita cost herein referred to shall not be interpreted to include moneys expended for school sites, school building construction, equipment, payment of bonds, or such other purposes as shall be determined by the superintendent of public instruction not properly included in operations costs." (emphasis supplied)

Pursuant to the above quoted statutory provision, boards of education have discretionary authority as to whether they will admit nonresident pupils in their respective school districts. However, boards of education that take

nonresident pupils must charge tuition for such pupils. *Jones v Grand Ledge Public School*, 349 Mich 1; 84 NW2d 327 (1957).

In addition, it is clear from the provisions of MCLA 340.582, *supra*, that the tuition rates established therein are maximum rates. While boards of education accepting nonresident pupils must charge tuition, they need not charge the maximum rates set forth in the statute. Rather, boards of education may, in their discretion, establish and charge lower rates of tuition.

1972 PA 258, § 111, as amended by 1976 PA 261; MCLA 388.1211; MSA 15.1919(611) provides, in pertinent part, as follows:

“(1) Beginning in 1976-77, a district having tuition pupils enrolled on the fourth Friday following Labor Day of each year shall charge the district in which the tuition pupils reside tuition computed in accordance with section 582 of the school code of 1955, except tuition shall not be charged for adult part-time pupils. The resulting tuition rates shall be reduced by the gross per pupil membership guarantee provided under section 21, except that the following districts shall charge the full per capita operating cost determined in accordance with section 582 of the school code of 1955 for tuition pupils other than special education pupils:

- (a) A district not receiving a membership allowance under section 21.
 - (b) Beginning in 1977-78, a district enrolling pupils who reside in a district not receiving a membership allowance under section 21.”
- (emphasis added)

The above quoted statutory provision is applicable in situations where the tuition is being paid by the school district in which the pupil resides. It is not applicable to a situation where the tuition is being paid by the parents of the nonresident pupil.

In 1972 PA 258, § 117, the legislature has provided as follows:

“A district shall not be allotted or paid any sum under this act unless the district charges the legal amount of tuition for all tuition pupils enrolled on the fourth Friday of September of each year from the districts in which the tuition pupils reside and has certified that fact to the department. *If no district is legally liable for the payment of the tuition and the tuition has not been collected from the parents or guardians of the tuition pupils on or before June 30 of each year, the number of those pupils shall be deducted from the membership of the district and the allowances as provided in section 21 shall be recomputed accordingly. . . .*” (emphasis added)

The second sentence of the statutory section quoted above does not specify the tuition rates to be charged the parents of tuition pupils. Thus, pursuant to MCLA 340.582, *supra*, the board of education may establish any tuition rate that does not exceed the statutory maximum and charge the parents of nonresident pupils such tuition rate. The tuition rate need not be in the amount of the full per capita operating cost of the school district.

It is, therefore, my opinion that where the tuition for a nonresident pupil

is paid by his parents rather than by the school district in which he resides, the board of education of the school district where the pupil attends school need not charge tuition in the amount of the full per capita operating cost.

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