

8 May 1946

Mr. H. T. Cuthbert
Auditor, School District No. 1
Heard Building
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Cuthbert:

This will acknowledge receipt of your letter of 30 April, in which you request our opinion on whether or not a school district may charge a tuition fee for a pupil who is a nonresident of the district but a resident of the State. The situation as set forth by you is as follows:

"As auditor of School District #1, I recently made a report to the trustees in which I state:

'It is my contention, as an accountant and taxpayer and a resident of Arizona and more especially as your auditor, that it is contrary to the law for District #1 to charge tuition fees of any denomination to pupils of District #1, whether residents of the District or not, if they are residents of the State.'

As this matter is of grave interest to parents of children between the ages of six and twenty-one years, not only in Maricopa County but throughout the length and breadth of the State of Arizona, I respectfully request an opinion from you as our Attorney General as to whether it is in accordance with the Constitution and Laws of our State to charge pupils tuition fees if they are residents of the State and are between the ages of six to twenty-one for their education in our common schools.

I enclose copy of extract from my report which is now in the hands of the school trustees of District #1."

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Section 6 of Article 11 of the Constitution of Arizona provides:

"Minimum school term. The university and all other state educational institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible.

The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years."

There is no other constitutional provision relative to the particular question at hand.

Section 54-502, Arizona Code 1939, reads as follows:

"54-502. Who entitled to attend; nonresidents. All schools other than high schools and evening or night schools, unless otherwise provided by law, must be open for the admission of children between the ages of six and twenty-one years, residing in the district. The board of trustees may admit children not residing in the district, but within the state, upon such terms as it may prescribe. The children of nonresidents of the state may be admitted upon the payment of a reasonable tuition fixed by the board. The board may exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases, and may arrange for the admission of classes of beginners at regular or stated intervals."

It will be noted that this Section authorized the board of trustees to prescribe the conditions for admitting children not residing in the district but residing within the State. However, we are of the opinion that this does not authorize the board of trustees to charge a tuition fee for such children, particularly in view of the fact that children who are nonresidents of the State may be charged a reasonable tuition. If the legislature had intended that children who were nonresidents of the district but residents of the State should be charged a tuition, it would not have made this distinction in Section 54-502.

Section 54-513 provides for the establishment of night schools and authorizes a tuition fee for all persons over twenty-one years of age. However, no authority is given to charge a fee for children under the age of twenty-one years.

Section 54-903 provides:

"Admission of pupils; tuition of nonresidents. Students shall be promoted from the eighth grade of the common schools on certificates of promotion, granted as prescribed by the state board, and signed by the teacher of such eighth grade having but one teacher, or by the principal

of the school, or the city superintendent of schools, and by the county superintendent. Such certificates shall admit the holders to any high school in the state. Within any high school or union high school district, the superintendent of such high school shall supervise the work of the eighth grade of all schools employing no superintendent or principal. Nonresident pupils of school age, otherwise qualified, residing in the county in which there is a high school, but in a district having no high school, nor a school wherein high school subjects are taught, shall be admitted to such high school on the same conditions as residents, upon paying a reasonable fee for each pupil to be fixed by the board in charge of the high school, not to exceed, however, such amount as would equal the average cost per pupil of the high schools of the county after deducting the amount received from the state and county, such payment to be made monthly. Said tuition shall be a legal charge against the school district in which said nonresident pupil resides, and levied and collected in the same manner as other school taxes, and shall be paid by said school district out of the funds of such district upon presentation to the clerk of such district of a statement, verified by the clerk, superintendent or principal of the high school district furnishing such instruction, stating the grade or grades in which such pupil was enrolled, the number of months enrolled, the name of such pupil and the amount of tuition. Thereupon an order shall be drawn by said district in favor of the high school district for the amount of such tuition. The residence of the person having the legal custody of the child shall be considered the residence of the child."

Section 54-917 contains the following provisions:

"54-917. No tuition to residents; Fee for nonresidents. Instruction in such departments shall be free to all residents of the high school district. The high school may charge nonresident pupils, attending and receiving instruction in such departments, tuition to be fixed by the board of trustees, not to exceed, however, three dollars (\$3.00) per month for each pupil, and their tuition shall be a legal charge against the school district in which said pupils reside and shall be paid out of the funds of such district upon presentation to the clerk of such district of a statement verified by the clerk, superintendent or principal of the high school

district furnishing such instruction, stating the names of the pupils, the grade in which enrolled, the number of months and the amount of tuition. Instruction in such departments shall be of a practical character and when necessary to accommodate a reasonable number of pupils attending only in winter months, special classes may be formed for them."

The Supreme Court of Arizona discussed these two sections in the case of In re Arizona Southwest Bank's Estate, 41 Ariz. 507, 19 Pac. (2d) 1033. The court said:

" * * *

The only charge a high school may demand of any student is a reasonable monthly tuition fee of those pupils living in the county but not in the high school district, and this must be fixed by the board of education but cannot exceed in amount the average cost per pupil of the high schools of the county after deducting the sum received from the state and county, and must be paid by the district in which the pupil resides. Section 1075, Rev. Code 1928.

Instruction in such departments even as agricultural, mining, manual training, domestic science, or other vocational pursuits, shall be free to all residents of the high school district, though nonresident students who take these special courses may be charged a monthly tuition fee of \$3, but it also is a legal claim against the district in which the student resides and not against him. Section 1084, Rev. Code 1928. * * *."

In view of the discussion in the Southwest Bank's case, we are of the opinion that there is no authority for an elementary school or high school to charge a tuition fee of a pupil who is a resident of the State but a nonresident of the district. The only constitutional or statutory provisions relating to this subject are those set forth above. In both Section 54-908 and in Section 54-917 a tuition is authorized but only as a charge against the home district of the pupil and not against the pupil or his parents.

Yours very truly,

JOHN L. SULLIVAN
Attorney General

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Assistant Attorney General