

December 17, 1947

Cliff Harkins, Assistant Superintendent,
Department of Public Instruction,
State Capitol,
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Harkins:

We have the letter addressed to you from the Nogales Public Schools regarding tuition for Mexican children temporarily residing in Nogales, the precise question being stated in a letter to this office from Mr. Mitchell, Superintendent of the Nogales schools as follows:

"Just a few days ago, a student presented to my office a paper showing the establishment of a guardianship by a party living in Nogales, Arizona, indicating that the guardianship had been carried out for the purpose of evading the payment of the regular monthly tuition. The parents of this student live in Culiacan, Mexico and attended our schools last year, paying the regular tuition".

Mr. Mitchell refers to an opinion of the Attorney General's office written in October, 1929. However, this opinion was later supplemented by an additional opinion written December 7, 1929, a copy of which we enclose. We believe this latter opinion adequately covers the above question.

It is apparent that the child in question moved to Arizona for the school term solely for the purpose of attending school, and even though a guardian may have been appointed for the child, the fact that the child returns to the home of his parents in Mexico for the summer months clearly indicates that the actual domicile of the child is Mexico rather than Nogales, Arizona. This subject is well-stated in the case of State v. School District No. 12, Niobrara County, 18 Pac. (2d) 1010, where the court uses this language:

"And 56 C.J. 810, 811, summarizes the result of the cases in this language:

'Free instruction in the district school, open to residents of the district only, cannot be claimed as matter of right by a nonresident child whose primary purpose in coming into a school district is to attend the public school

therein, or by children of a person who comes temporarily into a district to reside during the scholastic year for the purpose only of sending his children to the school of that district, or by children of a person residing without a state and sending them into the state and acquiring a domicile for them, so as to entitle them to a free common school education therein, or by a child temporarily sojourning in the district but claiming a home outside the district, or by children boarded out in a boarding house in the district by parents living in another district under an agreement that reserved the right of the parents to take them back at any time".

It is apparent from the foregoing that it may generally be stated that no subterfuge may be used in order to qualify a child's attendance at a school where the actual domicile of the child, that is, the domicile of the child's parents, is elsewhere. It is therefore our opinion that the appointment of a guardian for a child whose parents live in Mexico does not make that child a resident of the State of Arizona so as to be entitled to free tuition in a school where the child returns to the home of its parents during the summer months.

Trusting this answers your inquiry, we are,

Very truly yours,

EVO De CONCINI,
Attorney General,

PERRY M. LING
Chief Assistant
Attorney General

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