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August 7, 1953

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ARIZONA ATTORNEY GENERAL

Mr. M. L. Brooks, Superintendent
Department of Public Instruction
Phoenix, Arizona

Attn: Mr. Holbert

Dear Mr. Brooks:

We enclose herewith an opinion requested by your office concerning the attendance of a student in an adjoining school district, where the student is not entitled to a certificate of educational convenience.

Also enclosed is your complete file of correspondence.

We trust this opinion will fully answer your question. If it does not, do not hesitate to contact us again.

Yours very truly,

RMB/CHG
Enc.

RONALD M. BOND
Special Assistant to the
Attorney General

*For further clarification
of Opinion # 52149, see
letter of 7-15-52 addressed
to Honorable F. Galt Hopkins,
University, Phoenix, Arizona
...
...*

53-149

For further clarification of Opinion 53-149,
see letter of 7-15-53 addressed to
The Honorable Eugene Ingraham, General
Atty, Yuma Co. Ct. House, Yuma, Ariz.,
Attn: Wm. W. Nabours, Deputy Co. Atty.

August 7, 1953
Opinion No. 53-149

TO: M. L. Brooks, Superintendent
Department of Public Instruction
Phoenix, Arizona

RE: Entitlement to average daily
attendance funds where students
attend a school in an adjoining
school district without securing
a certificate of educational
convenience.

QUESTION: Where children, without securing
a certificate of educational con-
venience, attend a school in an
adjoining school district, which
of the two school districts is
entitled to the average daily at-
tendance funds for those children?

It is the opinion of this office that "the State and County A.D.A. funds follow the child only if he has a certificate of educational convenience." If he does not have such a certificate, the funds do not follow the child, but stay in the district of the child's residence. In other words, the school district wherein the child resides is entitled to the average daily attendance funds where the child is not entitled to a certificate of educational convenience.

There is no provision in our present statutes whereby a school attended may receive A.D.A. funds for students from another school district, other than under the provisions of 54 A.C.A. 416, that is, where a certificate of educational convenience has been issued.

The only references in our statutes to the admission of students from another school district are found in Section 54-416, subsection 5, A.C.A. 1939, as amended, and Section 54-502, A.C.A. 1939. The pertinent part of the first statute reads as follows:

"54-416. Powers and duties of Board of Trustees. --
* * * * *

5. The board of trustees may admit pupils from

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any other district upon a certificate of educational convenience issued by the county school superintendent. * * * (Emphasis supplied)

The pertinent part of the second statute cited reads as follows:

"54-502. Who entitled to attend.--Non-residents.--* * *The board of trustees may admit children not residing in the district, but within the state, upon such terms as it may prescribe. * * *"

Section 54-502, supra, dates back to 1933, and although the 1952 amendment to Section 54-416, supra, makes special provision for the allocation of average daily attendance funds where a certificate of educational convenience has been issued by the County School Superintendent, it is the opinion of this office that this later statute does not repeal the provision quoted from Section 54-502, supra. Hence, a school district may admit non-resident children on its own terms, but if no certificate of educational convenience has been issued by the County School Superintendent such school district may not include those non-resident students in average daily attendance, nor will it be entitled to average daily attendance County and State funds.

In other words, Section 54-416, subsection 5, A.C.A. 1939, sets out the only method by which average daily attendance funds can be made to follow a child who is attending a school in an adjoining district.

Section 54-416, supra, until it was revised in 1949, provided for just such a case as is presented here. The law provided that if a school district admitted a non-resident student without written permission from the school board where the student resided, the school of residence was credited with attendance of the student. This provision became a nullity in 1949 when the statute was amended to provide for certificates of educational convenience. In amending this section the Legislature did not provide for the instant case.

The Legislature having failed to provide for such a situation as this, and we being unable to rely on the old statute which until 1949 fully and completely answered this question, and there being no other Arizona statute from which we can infer the present legislative will on this question, we have no alternative but to interpret Section 54-416, subsection 5, supra, in the light of all of the applicable legislation on the subject, and previously established legislative policy.

We quote from 50 Am. Jur., Section 295:

"§ 295.--History of the Times.---A presumption exists that historical facts in connection with the subject matter of an act were known to the legislature at the time of the adoption of the statute, and it is a general rule of interpretation, that where the language of a statute is obscure or of doubtful meaning, the court, in construing such statute, may with propriety recur to the history of the times when it was passed. Under this rule, it is proper to consider the attending conditions or circumstances at the time of the adoption of the law, including the social economic, and governmental condition of the state or country. Indeed, it has sometimes been said that the first step in the application and interpretation of a statute is to consider the conditions existing prior to its adoption, and that the meaning of words in a statute must be closely related to the circumstances of their use. * * *"
(Emphasis supplied)

Section 54-416, A.C.A. 1939, was first amended to provide for certificates of educational convenience in 1949. A study of the cause for this change in the law will reveal that it was written so that students living at a great distance from a grade school or high school in their school district could attend another school located much more conveniently, even though the school which was convenient was across the state line. A good example of this situation existed in Mohave County north of the Colorado River. After the enactment of this law, students living in the extreme northern part of Mohave County could attend the Battle Mountain, Nevada, High School. Their own high-school was at much too great a distance for certain of these students to attend. It can be readily seen that the reason for the enactment of this statute, was not to give students a choice between schools, when their own school was convenient to them, but this act was to alleviate a very difficult situation with respect to students living very far from a school.

We quote further from 50 Am. Jur., Section 354, as follows:

"§ 354. Earlier Statutes.---In the enactment of a statute, earlier acts on the same subject are generally presumed to have been in the knowledge and view of the legislature which is regarded as having adopted the new statute in the light thereof and with reference thereto. Therefore, in the

construction of a statute, reference may be made to earlier statutes on the subject, which are regarded as in pari materia with the later statute. A comparison of the prior law with the present is considered helpful in determining the true intent of the legislature. It has even been held that an earlier statute on the same subject which has expired or been repealed may be considered in construing an act of doubtful meaning." (Emphasis supplied)

We quote further from 50 Am. Jur., Section 299, as follows:

"§ 299.--Previously Established Policy.--* * * Accordingly, a purpose to effect a radical departure from a firmly established policy will not be implied, but must be expressed in clear and unequivocal language, and such policy is not to be regarded as abandoned further than the terms and objects of the new legislation unmistakably require. These rules apply to the economic and sociologic policy of the state." (Emphasis supplied)

Applying the above law to the instant case, let us first look at the law as it existed between 1933 and 1949. Section 54-416, Subsection 5, A.C.A. 1939, during this period reads as follows:

"54-416. Board of trustees, powers and duties.--
* * * * *

5. The board of trustees may admit pupils from any other district upon the written permit from the board of such other district; provided, however, that if the board admits a pupil from any other district without such written permit the attendance of such pupil shall be credited to the district in which such pupil resides."

Thus we see that from 1933 to 1949, the School Board of the District in which the child resided was entitled to approve or disapprove the attendance of one of its resident children in another school district, and if approval were not given by the school Board where the child resided, that school district where the child resided was entitled to be credited for the attendance of such pupil.

An amending Section 54-416, Subsection 5, A.C.A. 1939, the Legislature did not make provision for a situation where a student could conveniently go to the school in his own district, but

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Department of Public Instruction

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preferred to go to a school in another district, insofar as A.D.A. credits and funds are concerned. If another school district wishes to accept a student on its own terms, it is the opinion of this office it may do so. But such action, in the absence of the student having obtained a certificate of educational convenience, will not entitle it under any circumstance to A.D.A. credits for funds for that student.

This opinion is based on the complete lack of any indication in our statutes that the Legislature intended to make a radical change in the law controlling such cases as this from the way they were formerly handled.

ROSS F. JONES
The Attorney General

RONALD M. BOND
Special Assistant to the
Attorney General