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ARIZONA ATTORNEY GENERAL**

December 14, 1954
Opinion No. 54-168

TO: The Honorable Wes Polley
Cochise County Attorney
Courthouse
Bisbee, Arizona

RE: Arizona school line budget system,
non-residence classification and
A.D.A. Credits.

- QUESTIONS:** (1) Under the line budget system, may a school district having budgeted for the purpose of a passenger vehicle under Furniture & Equipment, pay for the vehicle under said category despite the fact that the code for the line budget specifies that such property should have been budgeted under transportation equipment?
- (2) Should the children of citizens of the United States working in Mexico, who attend public schools through the Naco School District, be required to pay tuition for school attendance?
- (3) Should these students be included in the computation of average daily attendance?

In answer to the first question, we make a direct reference to Chapter 147, of House Bill No. 236, which contains Section 54-603, A.C.A. 1939, as amended. In this amendment, there has been included a budget form that is to be followed by the respective school districts, of which the following is a part:

"CAPITAL OUTLAY

I.	Furniture & Equipment	_____	_____	_____
II.	Transportation Equipment	_____	_____	_____
III.	Additions, alterations & improvements			
	a. Salaries & Wages	_____	_____	_____
	b. Materials	_____	_____	_____
	c. Contracts	_____	_____	_____
	Total Capital Outlay	_____	_____	_____
	Tuition to other School Districts	_____	_____	_____
	GRAND TOTAL INCLUDING CAPITAL OUTLAY	_____	_____	_____

Our interpretation from the facts submitted to our office is that when the above-referred passenger vehicle was entered in the line budget, it was written under the category of Furniture and Equipment, rather than Transportation Equipment, as shown above. We do not consider this to be a fatal error justifying the refusal to accept the claim to pay for the vehicle by those responsible. The accounting category in this budget form would seem to be capital outlay and the itemization that follows would seem to serve for clarification purpose only and would not change the general form set up if error, as the one here considered, was found to exist.

It is admitted that the proper line classification required for a vehicle was not used and that the entry was wrong. As pointed out in your letter, justification for the error might be said to be that the budget was prepared by the respective school districts before the Accounting and Code Handbooks were made available. Furthermore, mention is also made that at the time the budget was being prepared, question arose as to the proper classification the particular vehicle here considered was to be given. This diversity of opinion at the time was based in that the vehicle was to be used for an administrative purpose.

In view of the presence of these circumstances, we resort to the interpretation the different other states' jurisdictions have given to similar problems where laws required the itemizing of school budgets. PEOPLE Ex Rel., TAMAN vs OTIS ESTATE, (1941)

33 N.E. 2nd 202, 376 Ill. 112. In this case the Court held that where the law requires itemization in the school budget it should be accorded a practical and common sense consideration.

In line with our problem, the case of PEOPLE, Ex Rel., LINDHEIMER vs HAMILTON, (1940) 25 N.E. 2nd 517, 373 Ill. 124, states that a school budget is required to insure that taxes levied for a specific purpose, be spent for that purpose only. PEOPLE, Ex Rel TAMAN vs BELMONT RADIO CORPORATION, (1944) 57 N.E. 2nd 479, 388 Ill. 11. Here, the Illinois Court found that where a certain appropriation was under capital outlay for the construction and betterment of certain school property, that the classification, capital outlay, was sufficient to designate the general purpose for which such appropriation was made to meet the itemization requirements of a school budget statute.

In the case of WHITE vs BOARD OF EDUCATION, CITY OF MAYSVILLE, (1936) 91 S.W. 2nd 539, 263 Ky. 1, the Court followed the reasoning that where discrepancies in school budget were attributed to mistakes which were satisfactorily explained, City Council could not refuse to fix the levy requested by Board.

When we pursue our question further and ask on what basis the school superintendent might rightfully refuse to pay for the vehicle purchased, we find that there is no statutory ground for such a refusal. The pertinent part of Section 54-603, supra, reads as follows:

"* * * No expenditure shall be made for a purpose not particularly itemized and included in such budget, and no expenditure shall be made, and no debt, obligation or liability shall be incurred or created in any year for any purpose itemized in such budget in excess of the amount specified for such item,* * *"

There are two points made in this statement. The first is that no expenditure shall be made for a purpose not itemized in the budget. From the information you have given us, it appears that the purpose was itemized in the budget. The statute does not say "no expenditure shall be made for a purpose not itemized and included in the budget in the particular line category provided for the purpose." All the statute requires is that it be itemized somewhere in the budget. Since it was itemized, and was properly itemized insofar as being placed under the heading of Capital Outlay, the superintendent has no right to refuse to pay it.

The second point is that no expenditure shall be made for any purpose in excess of the amount specified for such purpose. From the information you have given us, it appears that there is no intention to spend more than the amount set forth in the budget. Thus, this point cannot be used by the superintendent as grounds for refusal.

Therefore, it is the opinion of the Department of Law that, based on the wording used in the above-quoted section, the school superintendent should honor the claim here in question presented to him.

This Department makes the further recommendation; that to justify any later misunderstanding, the proper person should prepare in detail a letter or an affidavit setting forth what occurred and the reasons justifying same. That this letter or affidavit accompany the forms required by law in making claims and be submitted to the county school superintendent in the proper number of copies. The superintendent should acknowledge receipt of same and his acceptance or rejection of the claim. That the county board of supervisors should consider the matter and give their approval or objection. That if, under the circumstances, the claim is accepted, all the above-mentioned papers be attached to the claim and presented to the proper office for payment.

It might be felt that the above recommendations do not provide sufficient safe guards for those that are to stand responsible when payment is made. If such is found to be the case, we would like to bring to the attention of those concerned, that an alternative procedure, would be to follow the law as set in the Arizona case of BARRY vs PHOENIX UNION HIGH SCHOOL DISTRICT OF MARICOPA COUNTY, (1948) (Briefly summarizing the facts: School superintendent refused on various grounds to pay claim presented to him, one being that the item was not properly entered and categorized in the school budget. Another reason was that the school board could not maintain a mandamus action. The Court held in favor of the school board on both counts and allowed payment of the claim.)

* * * * 55 C.J.S., Mandamus, § 45, p. 75:

'Public officers or boards of officers may maintain proceedings in mandamus to compel other officers to perform ministerial acts which come within the scope of their supervision or which are necessary to be performed in order to enable such officer or board to perform its own duty.* * *'

* * * * *

The board of education has full supervision of the schools in its district including the carrying out of the school lunch program, sec. 4, Chap. 98, Laws of 1947, and was therefore vitally concerned in seeing that its vouchers were honored by respondent in order that its financial integrity might be maintained and its manifold duties discharged.

* * * * *

Furthermore, it was stipulated at the trial that in preparing the budget for the year 1947-1948, the records of the Phoenix Union High School District show that there was an itemized breakdown in detail covering proposed expenditures on the cafeteria. It would appear, therefore, that pursuant to instructions by the State Superintendent of Public Instruction and the forms as furnished by that office, both from the school district's annual budget and the analysis of the estimated current expenses attached thereto, the proposed expenditure for lunch room equipment was for a purpose included within the petitioner's budget. The trial court was therefore fully justified in so holding, hence there is no basis in fact for respondent's second assignment of error."

(Emphasis supplied)

Therefore, based on the above Arizona authority, it is recommended that the alternative procedure that the school board might follow is to bring under a mandamus proceedings an action to compel the school superintendent to draw a warrant upon the county treasurer against school funds for the payment of the vehicle in question. The actions of all those concerned then would be based on a decision given by our Court.

Pursuant to your second question raised in your letter with respect to children who are United States citizens, attending schools in the Naco School District, when the man of the family works at Cananea, Sonora, Mexico, we may refer to the following statutory provisions in our Arizona Code. First in answering this question, we will assume from the facts that were submitted to our office that the employees of the mines in question and their children actually live in Mexico. If our assumption is right, our answer to this second question is that these children

should not be attending schools in the Naco School Districts on free tuition basis. Our statute Section 54-502, A.C.A. 1939, reads as follows:

"54-502. Who entitled to attend--Non-residents.--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 non-residents of the state may be admitted upon the payment of a reasonable tuition fixed by the board. * * *" (Emphasis supplied)

It should be pointed out here that the words "residing" and "resident", used in the word "non-resident" in the above-quoted section were undoubtedly intended by the legislature to have the same meaning.

Section 54-505, A.C.A. 1939, reads in pertinent part as follows:

"54-505. Compulsory attendance--Excuses for non-attendance--Child labor.--Every person in the state having control of any child between the age of eight and sixteen years, shall send such child to a public school for the full time that such school is in session within the district where such child resides, * * *" (Emphasis supplied)

* * * * *

Here under our compulsory attendance law, we can interpret that the privilege of children enjoying the right to attend public schools in Arizona is conditional on the parents, in that they have to comply with the duty imposed on them by law of seeing that their children do go to school. Otherwise, the law sets a penalty for the violation as shown in the following code section:

"54-506. Violations of previous section--Penalty.--Any person violating the provisions of the preceding section shall be guilty of a misdemeanor, and fined not less than five (\$5.00) nor more than three hundred dollars (\$300), or

be imprisoned in the county jail for not less than one (1) nor more than ninety (90) days, or by both such fine and imprisonment."

Therefore, it can be clearly interpreted from the above code sections that the individual residing in a particular district may compel the school district to accept him in their public schools as a matter of right and that the school district in turn has the right to require that person having control of a child residing in the district to send such child to school, and if he fails, without showing that an excuse, as provided by law, existed, then the parent, guardian, or other person having control of the child, may be punished as provided.

Let us first consider the facts brought out by your letter. Mention is made that the individual working in Mexico and their children are United States citizens. It is considered a well established fact that the right of a child to attend public schools maintained by the state is not a privilege or immunity of a citizen of the United States as such. To substantiate our reasoning, reference here is made to 12 Am. Jur. 124, that states that the privilege or immunity clause in Article 4, Section 2, of the United States Constitution does not apply to this subject. However, there is such a right with some conditions to citizens of Arizona found to be residents of the state. This right is by virtue of our constitutional and statutory provisions. Article 11, Section 6, Arizona Constitution provides:

"§ 6. (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." (Emphasis supplied)

Article 20, Seventh Clause, of the Arizona Constitution provides:

"Seventh. (Public schools-Suffrage.)--Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the

children of the state and be free from secretarian control, and said schools shall always be conducted in English. (Error noted)

The state shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude." (Emphasis supplied)

The above right, as shown by our following discussion, is not based on mere proof of Arizona citizenship. Place of residence is an important element. Reference is here made to the case of, IN RE STATE OF ARIZONA SOUTHWEST BANK (1933) 41 Ariz. 507, 19 P. 2nd 1063. Although the facts here involved dealt with a United States and Arizona citizen living in Arizona, our Supreme Court held that the school being attended could demand of those pupils living in the county, but not in the school district, a reasonable monthly tuition fee. We believe in view of our courts reasoning that a student, not residing in the school district but a citizen of the state, is not entitled, as a matter of right, to attend a public school in another district without the imposition of certain conditions such as paying of a tuition fee. It logically follows that if a resident student of the state of Arizona does not have that absolute right, a non-resident student therefore could not claim the privilege of attending an Arizona school without meeting the statutory conditions of paying of tuition fees.

The Constitutional provision of the states of California and Wisconsin are very similar to ours, with regard to establishment of free schools in each school district. The following cases from these states are cited as reference reaching in principle similar decisions as that of our Arizona courts, as it concerns our problem:
C (FILLMORE UNION HIGH SCHOOL DIST. OF VENTURA COUNTY vs COBB, (1935)
5 Cal. 2nd 226, 53 P.2nd 349; STATE Ex Rel. COMSTOCK vs JOINT
SCHOOL DIST. (1886) 65 Wis. 631, 27 N.W. 829.

We may next consider the statement in your letter that these United States citizens are registered to vote in Arizona. Section 55-512 of our Arizona Code sets up rules by which one may determine the residence of an individual for voting and political purposes. To leave no doubt, we here cite two Arizona cases that might seem at the outset to be contrary to our conclusion. We have in the case of HIATT vs LEE (1936) 48 Ariz. 320, Judge Lockwood commenting on the above code section, as these rules apply to other situations, as follows:

"(1) * * * Section 1216, Revised Code of 1928, gives certain rules for determining residence,

and while these rules apply specifically only to voters, yet we think they also set forth the general rule for determining residence whenever that may be an issue. * * *"

* * * * *

Also, our Supreme Court in the case of GROUNDS vs LOWE (1948) 67 Ariz. 176, in determining whether a person residing in one district could claim the right to vote and hold office from another district, made direct reference to the HIATT case and followed the rule given there in establishing the issue of residence. We appreciate the conclusions reached in both of the Arizona cases, as to the residence issue tried, but we feel that our problem has controlling factors that did not exist in the above cases.

One of these factors is that, in the above cases, the law provides for a privilege (voting and etc.) that the individual may enjoy while it sets no penalty if this privilege is not exercised. This fact that does not exist in our school problem where there is both a privilege and a penalty, which, in our opinion, would set forth a different interpretation on the issue of residence. To clarify this point, we make direct reference to the wording in our school laws that state "a child residing in the district." It is our interpretation that "residing" as here used applies to the place where the individuals in question actually live and not to the proper residence status for purpose of voting or other privileges given to United States and Arizona citizens.

Let us answer your last question as to whether these students should be included in computing the average daily attendance, in the following way. Arizona Code, Section 54-616, as amended, states:

"54-616. Certificate of educational convenience.--A student precluded by distance or lack of adequate transportation facilities from attending a common or high school in the district or county of his residence, may apply to the county school superintendent for a certificate of educational convenience. If it appears to the superintendent that it is infeasible for the student to attend the common or high school in such district or county, he shall issue a certificate authorizing him to attend a common or high school in an adjoining district or county, whether within or without the state. Such attendance, when certified to

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the county superintendent by the official in charge of the school attended shall be deemed for the purpose of determining average daily attendance, to be attendance in the common or high school of the county or district of the student's residence. In the event tuition is charged for nonresidence attendance by the school attended, the county school superintendent shall draw his warrant on the county treasurer in favor of such school for the amount so charged, in conformity with the provisions of paragraph 5, section 54-416."

Hence, a school district may admit a non-resident student as allowed under our school laws, but if no certificate of educational convenience has been issued by the county school superintendent, the attended school district may not include those non-resident students in their average daily attendance, nor will this district be entitled to the average daily attendance county and state funds. Since it would not be possible for the children in our problem to obtain the above certificate, the school district attended would not be entitled to the ADA credits.

Attention is directed to those parts of the above code section setting forth the procedure as to tuition fee allowances. Our conclusion should not be interpreted to mean that these United States and presumably Arizona citizens may not attend Arizona public schools, for they can. This would be under our laws' provisions where school districts are allowed to admit non-resident students on their own terms, as set by law.

Our conclusion is based on the interpretation of present school laws that requires that the individuals and their children reside and thereby establish residence in the school district. Our opinion is that, as to where they reside, is meant the place where the individual actually lives, which in this case, was determined to be Mexico.

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