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August 2, 1955
Opinion No. 55-173

REQUESTED BY: James P. Boyle, Deputy County Attorney
Yavapai County, Prescott, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
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QUESTION: 1. What is the basis for computation of tuition for a school child attending in a district other than the district of the child's residence?

2. What is the basis for charge for transportation of a school child from the district of the child's residence to the district school actually attended?

CONCLUSION: 1. The basis for computation of tuition for a school child attending in a district other than the district of the child's residence should be on an average daily attendance basis, and the tuition charge should not exceed the average per capita cost of the common or high schools of the county in which the pupil attends for the school term in which the pupil attends.

2. Section 54-416, Subsection 6, provides that a given Board of Trustees of a school district may provide transportation for any child or children, when they deem it for the best interests of the district, whether within or without a district, county or state. There is no statutory basis for charging for transportation of a school child from the district of the child's residence to the district actually attended. This is strictly a school district problem, and in the event the school of attendance does not provide transportation, then the school of residence may provide such transportation.

The state-wide basis for the apportionment of public monies to school districts is upon the Average Daily Attendance. Average Daily Attendance is specifically defined by the code and is familiar to all school people. The section of the code which applies to the first question is as follows: Sec. 54-416, ACA, 1939, sub-section 5:

> "The board of trustees may admit pupils from any other district upon a certificate of educational convenience issued by the county school superintendent. Such attendance, when certified to 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 non-residence 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, but not to exceed the average per capita cost of the common or high school of the county in which the pupil attends, whether from within or without the state, plus an amount for capital outlay, not exceeding one hundred dollars ($100) per pupil per year, to be determined by the school attended, and shall charge the amount against the fund of the district or county in which the student resides."

The above-quoted section states that when tuition is charged, such tuition is not to exceed the average per capita cost of the common or high school of the county in which the pupil attends. The individual district itself has an actual per capita cost, but the individual district does not have an average cost for any given year. Therefore, the inclusion of the term "average" can only apply to a per capita cost of all the common or high schools within the county in which the district in question is located. The interpretation applied above is given support by the provisions of Section 54-908, ACA, 1939, dealing with the admission of pupils and the charge of tuition of non-resident high school pupils. The wording of that section contains the following phrase:

> "Average cost per pupil of the high schools of the county."

Section 54-502 provides that the board of trustees of a school district may admit children not residing in the district upon such terms as the board may prescribe. This section and the preceding two sections cited, when read together, will give a reasonable and uniform interpretation of the problem.

There is, however, a subsidiary question; namely, whether the attendance of the pupil shall be counted or computed on a membership basis or an Average Daily Attendance basis. It can be read from the school law that Average Daily Attendance is the principle

of computation decided upon by the Legislature, and for that reason, if for no other reason, Average Daily Attendance should be used in computation. There is added to this reason, however, the fact that Average Daily Attendance, when used as an element of computation, will give the desired uniformity, and there is added the third reason for its use--that the school district of the child's residence, that is to say the school district which actually pays the tuition, can only obtain compensation from the state and county under the school apportionment program on the basis of Average Daily Attendance figures. The law gives to such districts a revenue based upon that school's Average Daily Attendance, and the law gives to such school a credit for pupils residing within its district but attending school in another district based upon Average Daily Attendance. It would not be practicable to charge tuition on the basis of membership and credit the school paying tutition on the basis of Average Daily Attendance.

Section 54-416, Sub-section 6, prescribes that a given board of trustees of a school district may provide transportation for any child, when such transportation is deemed by the board of trustees to be in the best interest of the district. A fair reading of this provision would lead to a conclusion that the board has broad discretion in the amount, type, and means of transportation which it intends to provide. It would not have to provide any particular means of transportation, and it would not be required to provide transportation over broad reaches of territory in the event it should prove inefficient, impracticable, or for other reason not in the best interest of the district directly concerned.

The special county reserve fund created by Section 54-604 provides for transportation of school children to rural schools and transportation of school children in unorganized territory to organized districts. There are no other general transportation provisions, with the possible exception of Section 54-509 and Section 54-510, which are not regarded to be pertinent to this question. Since transportation, thus, is a district problem, and because there is a provision in the code for budgeting for transportation (Section 54-603), both as a capital outlay and as an operating expense, this must be regarded as a district problem to be met by the district most directly concerned. In the event the school of attendance does not choose to provide transportation, the school of residence may provide such transportation, and vice versa.

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