

**LETTER OPINION
2000-L-111**

June 28, 2000

Honorable Jerry Klein
State Senator
331 2nd Street North
Fessenden, ND 58438-7203

Dear Senator Klein:

Thank you for your letter inquiring about tuition payment responsibilities between school districts where a child has been sent by the parent who lives in one school district to live with relatives who live in another school district.

You refer to prior communication with my office on this matter, and our file includes a letter from the school's principal to you, dated May 18, 2000.

The background facts appear to be that a parent who lives in one county and school district informally sent her child to live with relatives in another county and school district. No governmental agency was involved in making this transfer. The child attended school in the relatives' school district for a period of time. Later, the child had to attend a neighboring school district and the relatives' school district was called upon to pay tuition to that neighboring school district. The relatives' school district balked at paying that tuition, arguing that the parents' school district should pay.

The North Dakota Supreme Court has addressed residency for school attendance purposes under circumstances involving informal relocation of children. In *Anderson v. Breithbarth*, 245 N.W. 483 (N.D. 1932), the court dealt with a child whose mother lived out of state and sent the child to live with her aunt and uncle in North Dakota for purposes of furnishing the child a decent home and lightening the financial burden on the mother. In that case, the court noted that the mother's parental rights had not been terminated but that the child had become, for all intents and purposes, a member of the aunt and uncle's family. *Id.* at 484.

Honorable Jerry Klein
June 28, 2000
Page 2

After noting that a child may have a residence for school purposes distinct and separate from the domicile of the parent, 245 N.W. at 485, the court determined that a child resides in a school district when the child:

<PAGE NAME="p.L-112">makes its home in that particular district, whether with its parents, or with other persons, when that place is the only home it has, a place to which she comes and where she remains when not 'called elsewhere for labor or special or temporary purpose.'

245 N.W. at 487.

The school principal's letter seems to argue that because the Anderson case is 68 years old, its holding should no longer be respected. However, on October 1, 1992, the North Dakota Supreme Court reaffirmed the precedential value of the Anderson case and applied its precepts to a school residency issue. See Lapp v. Reeder Public School Dist. No. 3, 491 N.W.2d 65 (N.D. 1992).

Therefore, if the child in question fulfills the criteria described in the above quoted language in the Anderson case, and if the child was not merely sent into the school district for the specific purpose of enjoying school privileges in that particular school district, then the child is a resident of the school district and that district is responsible for paying tuition if the child must be educated in another district. Determining the specific facts of the issue you relate must be undertaken by the parties involved to determine the intent and reasons surrounding the child's placement with its relatives. Finding facts is beyond the scope of Attorney General's opinions.

In your letter, you state the school district in which the child now resides cites two sections of the Century Code in justification for its desire not to pay tuition to a neighboring district for the education of the child in question. You first cite N.D.C.C. § 30.1-26-04. That section permits a parent of a minor to temporarily (not more than six months) delegate to another person the parents' or guardians' powers concerning the care of the minor child. The editorial board comment following this section indicates its purpose is to reduce problems concerning consents for emergency treatment. This office has previously determined that delegations made in a power of attorney issued under N.D.C.C. § 30.1-26-04 do not grant residency status to a child for school attendance purposes. 1991 N.D. Op. Att'y Gen. 19 (May 1 to James Coats), copy enclosed.

Honorable Jerry Klein
June 28, 2000
Page 3

Your letter also cites N.D.C.C. § 14-10-05 as a basis for the school district's desire not to pay tuition. This section provides, in relevant part:

No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the <PAGE NAME="p.L-113">parent's child. Any such transfer or assignment, written or otherwise, is void. . . .

This section also states that a violation of this statute constitutes a class A misdemeanor, but it does not, by its terms, deal with residency of the parent or child for any purpose.

The source note for N.D.C.C. § 14-10-05 indicates its initial enactment in 1923, or nine years before the Supreme Court's decision in the Anderson case. In the 1923 session laws, the section provided, in relevant part:

No parent shall assign, or otherwise transfer his rights or duties with respect to the care and custody of his child under eighteen years of age, and any such transfer or assignment, written or otherwise, hereafter made shall be void. . . .

1923 N.D. Sess. Laws ch. 152, § 1. The section also states that a violation of this statute constituted a misdemeanor. Id. at § 3.

Recognizing that the parent in the Anderson case was out of state at the time of sending the child to North Dakota to live with relatives, if the North Dakota Supreme Court had thought the provisions of N.D.C.C. § 14-10-05 were relevant to school district residency, it would have dealt with it in its opinion. However, the court in Anderson dealt with residency for education purposes by applying precepts that deal with education and schools being free, open, and accessible. It is my opinion, therefore, that a violation of N.D.C.C. § 14-10-05 does not determine residency for school attendance purposes. If the school principal or others in the community have facts which they believe constitute a violation of N.D.C.C. § 14-10-05, they may report those facts to your county social services board and the county sheriff for review.

Sincerely,

Heidi Heitkamp

Honorable Jerry Klein
June 28, 2000
Page 4

Attorney General

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Enclosure