

Opinion No. [30-83]

August 27, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. J. Loomis, Clerk, Board of Education, Espanola, New Mexico.

SCHOOLS -- Tuition -- Sec. 120-1202 -- Code 1929.

OPINION

This is in acknowledgment of yours of even date just received, and in which you ask to be advised whether or not your Board should take pupils outside of the district without charging tuition, and also whether you may take Indian pupils and they not have to pay tuition.

After our conversation over the telephone yesterday I mailed you a copy of an opinion rendered the State Superintendent several months ago, and covering both these questions.

The only legislation I am able to find on the subject is contained in section 120-1202, Codification of 1929, which section reads as follows:

"Governing authorities of schools may admit non-resident pupils to the schools under their charge, provided school accommodations are sufficient to provide for them, and may determine the rate of tuition for pupils non-resident of the state and collect same, which tuition shall not be greater than the average cost per capita for education based on the average daily attendance of the district for the previous school term. When non-resident pupils, their parents or guardians, pay a school tax in this state the amount of such tax shall be credited on their tuition in a sum not to exceed the amount of such tuition, and they shall be required to pay tuition only for the difference therein."

You will note that although the governing authorities of schools may admit non-resident pupils, the only provision as to tuition is that such Boards may determine the rate of tuition for pupils non-resident **of the state**. You will note also that when non-resident pupils, their parents or guardians pay a school tax in this state they are to be allowed credit for such tax on the tuition. Considering all these things along with the distribution of school monies throughout the state impartially, I am of the opinion expressed in the letter sent you yesterday, that is that governing authorities of schools are without authority to collect tuition from pupils non-resident of the district but residents of the state who may be permitted to attend the schools; and his applies equally in the case of pupils who are children of tax payers in the state and of those whose parents pay no taxes, but authorities may collect tuition not greater than the average cost per capita for education based on the average daily attendance of the district for the previous school

term from pupils non-resident of the state who are permitted to attend the schools in such district.