



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL
OPINION NO. 85-18

(501) 371-2007

January 22, 1985

Albert "Tom" Collier
State Representative
2713 Ivy Drive
Newport, AR 72112

Dear Representative Collier:

This is in response to your opinion request on Act 111 wherein you provided the following fact situation and attendant inquiries:

A group of students attended school in a district outside their resident district for one full semester and a portion of the second semester for the school year 1982-83, without the benefit of a tuition agreement or transfer. Each student received grades each nine weeks and earned credits at the end of the semester. A tuition agreement was agreed upon and finally approved on March 3, 1983.

Do the provisions of Act 111 permit these students to continue to attend the non-resident district and be counted for average daily membership purposes? Further, do the students have the option of returning to their resident school?

For the following reasons, it is the opinion of this office that the answer to both questions you have proposed is yes.

Act 111 of the First Extraordinary Session of 1983 provides as follows:

Persons who attended during the 1982-83 and/or 1983-84 school year (and their siblings present or future), schools outside the boundaries of the school district wherein the persons reside, may continue attending such schools at the discretion of the receiving schools notwithstanding that the board of directors of the school districts wherein such persons reside disapprove the out-of-district attendance. Such students shall be counted in the receiving district's average daily

membership and not in the average daily membership of the district of residence. Nothing in this Act shall be construed as requiring any transfer of local funds to be receiving district.

At first glance, it is apparent that the children in question would be subject to the provisions of Act 111. There are, however, certain intervening circumstances which could alter this otherwise apparent conclusion. Were the tuition agreements made retroactive? Which school district was counting these students in their average daily attendance for purposes of state aid?

As long as the tuition agreements were not retroactive and the receiving district was counting the students in their average daily membership, it is the opinion of this office that the students in question would be permitted to continue to attend the non-resident district and be counted for average daily membership purposes. Further, nothing in Act 111 has the effect of preventing students from returning to their resident school district.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General C.R. McNair III.

Sincerely,



STEVE CLARK
Attorney General

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