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OPINION	:	No. 84-702
of	:	NOVEMBER 2, 1984
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THE HONORABLE RICHARD K. DENHALTER, COUNTY COUNSEL OF PLACER COUNTY, requests our opinion on the following question:

May a minor whose parents reside in one school district lawfully attend elementary or high school in another school district by living with "friends" in that district?

CONCLUSION

A minor whose parents reside in one school district may not attend elementary or high school in another school district by living in that district with "friends."

ANALYSIS

We are presented with the following factual situation: The parents of a student wish to have him enrolled in a school district other than the one in which they reside. To accomplish this they have had the child "live" with non-related "friends" or acquaintances in the other school district. The student is an unemancipated minor and we are told that none of the exceptions contained in section 48204 of the Education Code or section 17.1 of the Welfare and Institutions Code apply to his situation. (See fn. 2, *post*.) We are asked accordingly whether the student may be enrolled in that other district. We conclude he may not.[1]

Section 48200 of the Compulsory Education Law (Ed. Code, ch. 2, § 48200 et seq.; Stats. 1976, ch. 1010, § 2, at 3559 et seq.) currently provides as follows:

> "Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. *Each person subject to compulsory full-time education* and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) of this part *shall attend the public full-time day school* or continuation school or classes *for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of such pupil shall send the pupil to the public full-time day school* or continuation school or classes *for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located*. Residency, for the purpose of attendance in the public schools, shall be determined by Section 17.1 of the Welfare and Institutions Code.
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> "Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum school day established by law."

(Stats. 1976, ch. 1010, § 2, at 3559-3560; as amended by Stats. 1977, ch. 36, § 204, at 186.) We will see that but for its troublesome penultimate sentence with the reference to section 17.1 of the Welfare and Institutions Code, the language of section 48200 (as supported by its historical development) generally requires that children attend school in the district where the residence of either the parent or legal guardian is located and, unlike the situation

[1] This opinion does not address the question of which school in a particular district the minor must attend. Analysis of that issue would proceed from different premises.

before the section was amended in 1977 (Stats. 1977, ch. 36, § 204, *supra*) where the student might live or reside is quite beside the point.[2] (Compare 26 Ops.Cal.Atty.Gen. 269 (1955) and 11 Ops.Cal.Atty.Gen. 59 (1948) discussed, *infra*.)

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[2] While section 48204 provides certain exceptions to this general rule, we are told that neither they nor the ones contained in section 17.1 of the Welfare and Institutions Code attend in the situation presented. Nonetheless despite their not applying, we might amplify on the former since confusion in their regard has arisen. Section 48204 provides that notwithstanding section 48200, a pupil is deemed to have complied with the residency requirements for school attendance in a school district if he or she is:

> "(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.
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> "An agency placing a pupil in such a home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.
>
> "(b) A pupil for whom interdistrict attendance has been approved pursuant to the provisions of Chapter 5 (commencing with Section 46600) of Part 26 of Division 3 of this title.
>
> "(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.
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> "(d) *A pupil whose parent or legal guardian has established the residence of the pupil in a home located within the boundaries of that school district*, *provided such home is properly licensed as required by law*. The person maintaining such a home shall provide evidence to the school that a current license is in effect or that a license is not required under the law.
>
> "(e) A pupil residing in a state hospital located within the boundaries of that school district."

The only possible exception that would relate to a voluntary placement of a child in a home other than the home of the parents is subdivision (d). But there the home would either have to have been licensed by law—e.g., as a foster home *qua* "community care facility" (Health & Saf. Code, § 1502(a)(2)): "community care facility" includes "foster family home," i.e., any residential facility providing 24-hour care for 6 or fewer foster children which is owned . . . and is the residence of the foster parent(s) . . . in whose care the foster children have been placed . . . by voluntary placement by . . . parents"; *id.*, § 1508: no person shall operate a community care facility without a license); and see generally Health & Saf. Code, § 1500 et seq. and 22 Cal. Admin. Code, § 8700 et seq.)—or be exempted from such licensure. The only exemption we have found that might possibly be relevant to the type of residential placement in question is that provided in subdivision (j) of section 1505 of the Health and Safety Code. It exempts from foster family home licensure:

Under section 48200, a student is required to "attend . . . school for the full time designated as the length of the school day by the school district in which the residence of either the parent or legal guardian is located" and the parent, legal guardian, or other person having control or charge of the student is under a duty to "send the pupil to the public school for the full time designated as the length of the school day by the governing board of the school district in which the residence of either the parent or legal guardian is located." This "almost-plain wording" of the section (cf. *Great Lakes Properties Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 155; *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230) thus defines the school district to be attended by that in which *the parent resides*. (Cf. *Anselmo* v. *Glendale Unified School Dist.* (1981) 124 Cal.App.3d 520.) We say "almost-plain wording" because a microscopic examination of section 48200 will show that it does not definitively state that "a pupil shall attend the public school in the school district in which the residence of either the parent or legal guardian is located." That it would, if, for example, there were an "and" between the words "classes" and "for" in each of the operative clauses of the section. But as it stands, the structure of those clauses is grammatically garbled because of a misplaced modifier (or defining appositive); the phrase "in which the residency of . . . the parent . . . is located," strictly speaking, only modifies its last antecedent, i.e., it only serves to describe the *time* a pupil must attend school and not the place of that attendance. (Cf. *White* v. *County of Sacramento* (1982) 31 Cal.3d 676, 680; *Addison* v. *Department of Motor Vehicles* (1977) 69 Cal.App.3d 486, 496; *County of Los Angeles* v. *Graves* (1930) 210 Cal. 21, 26; *People* v. *Cruz* (1974) 12 Cal.3d 562, 566.)

However, that strict grammatical rule is not slavishly followed when context or the evident meaning of a statute requires otherwise (*County of Los Angeles* v. *Graves*, *supra*, 210 Cal. at 26; *Elbert, Ltd.* v. *Gross* (1953) 41 Cal.2d 322, 326-327; *Oliva* v. *Swoap* (1976) 59 Cal.App.3d 130, 138) or when that meaning would be impaired in its application.

"Any arrangement for the receiving and care of persons by a relative or *any arrangement or the receiving and care of persons from only one family by a close friend of the parent*, guardian, or conservator, *if such an arrangement is not for financial profit and occurs only occasionally and irregularly*, as defined by the regulations of the state department."

However, since the exemption for placement with a nonrelated friend that is provided by the second half of the above quoted subdivision only applies where the placement is "occasionally and irregularly", it would not apply to the residential placement of extended duration that would allow the child to attend the schools of the district of the foster home. Consequently, when parents place a child for school-district residential purposes in a house other than the home of a "relative" (cf. 22 Cal. Admin. Code, § 87001 defining "relative") the home would have to be licensed. If it is, the child placed there may legally attend school in the district where the home is located; if it is not, the child would not qualify to attend the public schools of a district other than the district of the residence of the parent or legal guardian.

(*White* v. *County of Sacramento*, *supra*, 31 Cal.3d at 681, citing Sutherland, 2A *Statutory Construction* (4th ed. 1973) 47.33, at 159.) Certainly where the statutory language is sufficiently flexible to admit an interpretation which would further the intent of the Legislature, that should be seized to so interpret the statute. *White* v. *County of Sacramento*, *supra*; *Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247, 259; *In re Haines* (1925) 195 Cal. 605, 613.)

With these admonitions in mind we must not read section 48200 through the "last antecedent rule." To begin with section 48200 simply would not make sense if the phrase "in which the residency of . . . the parent . . . is located" did not also describe "*the* public full time day school" a pupil must attend. The school of attendance is absolutely particularized by the definite article "the" (cf. *People* v. *Enlow* (Colo. 1957) 310 P.2d 539, 546) and that particularization would be meaningless and left dangling if it were not further described. The phrase "in which the residency of . . . the parent . . . is located" serves that function.

In any event, with grammar aside, it is also a tenet of statutory construction that where several words are followed by a phrase that is as applicable to the first (e.g., "the school") as it is to the last (e.g., time for attendance set by the district board) the phrase will be read to apply to both, despite the "last antecedent rule," when that will effectuate the purpose of the law. (*White* v. *County of Sacramento*, *supra*, 31 Cal.3d at 681; extrapolating *Tripp* v. *Swoap* (1976) 17 Cal.3d 671, 679; see also *Wholesale T. Dealers* v. *National etc. Co.* (1938) 11 Cal.2d 634, 659-660; *Addison* v. *Dept. of Motor Vehicles*, *supra*, 69 Cal.App.3d at 496.) That must be done here. We have no doubt that the Legislature meant for the phrase "in which the residency of . . . the parent . . . is located," however (mis)placed it may be, to pinpoint the school district of a pupil's attendance. The tortured structure of the section has been on the proverbial books since at least 1943 (Stats. 1963, ch. 71, § 1, p. 641; see fn. 3, *post*), if not earlier (Stats. 1919, ch. 258, § 1, p. 407), and it has always interpreted in such a manner. (See 26 Ops.Cal.Atty.Gen. 269 (1955); 11 Ops.Cal.Atty.Gen. 59 (1948) citing older "School Code" opinions Nos. 8505, NS-2167, NS-2322, NS-2938, and NS-3923.) The Legislature has worked the sentence with that interpretation in mind and has not changed the sentence structure on which it was based. Obviously the Legislature has accepted that interpretation. (*State Commission in Lunacy* v. *Welch* (1908) 154 Cal. 775, 777; *Holmes* v. *McColgan* (1941) 17 Cal.2d 426, 430; *Rosemary Properties, Inc.* v. *McColgan* (1947) 29 Cal.2d 677, 687; *Union Oil Associates* v. *Johnson* (1935) 2 Cal.2d 727, 735; *Buchwald* v. *Katz* (1972) 8 Cal.3d 493, 502; *State of South Dakota* v. *Brown* (1978) 20 Cal.3d 765, 774.) If doubt remains in that regard, it is quickly dispelled by examining the substantive evolution of the section.

Prior to its amendment in 1977, section 48200 provided:

> "Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) *of this part shall attend the public full-time day school* or continuation school or classes *for the full time for which the public schools of the city*, *city and county*, *or school district in which the pupil lives* are in session and each parent, guardian, or other person having control or charge of such pupil shall send the pupil to the public full-time day school or continuation school or classes for the full time for which the public schools of the city, city and county, *or school district in which the pupil lives are in session*."

(Stats. 1976, ch. 1010, § 2, at 3559, derived from 1959 Ed. Code, § 12101 (Stats. 1959, ch. 2, § 12101, at 885, as amended), 1943 Ed. Code, § 16601 (Stats. 1043, ch. 71, at 641, as amended by Stats. 1955, ch. 854, § 1, at 1468, which, in germane aspect had changed "in which the pupil *resides*" to "in which the pupil *lives*").) Under that former direction, we interpreted the school district of attendance to be the district where *a pupil lived*, whether he lived with parents (or guardian) *or with friends*, and whether or not he lived there merely to be able to go to school in that district. (26 Ops.Cal.Atty.Gen. 269, 270, *supra*.)[3]

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[3] In 1948, when the precursor section 16601 (Stats. 1943, ch. 71, § 1, p. 641) provided that "each parent, guardian or other person having control or charge of any child shall send the child to the public . . . school for the full time for which the public schools of the . . . *school district in which the pupil resides* are in session," we reiterated an earlier conclusion that the term "residence" referred to the *actual residence of a minor* rather than his legal domicile (11 Ops.Cal.Atty.Gen., *supra*, at 60) and concluded that for the purposes of the Education Code, the residence of a minor living away from parents was *the place where the minor was actually living* (a) if he or she was living with persons permanently and under their full control and charge, regardless of the reasons for his/her living there or (b) if he or she was living with persons temporarily and not under their full control or charge but living there for other than educational purposes, but that *where a minor lived with persons temporarily and for educational purposes only and was not under their full control or charge*, *the minor's residence was that of his parents* (or such other persons as had control or charge of him) *and not the place where he was actually living*. (*Id.*, at 59.)

In 1955 the Legislature amended section 16601 to change the word "child *resides*" to "child *lives*." (Stats. 1955, ch. 854, § 1, at 1468.) When asked about the effect of that change we concluded that it confirmed "our previous interpretation that 'reside' was not used in the meaning of 'domicile' as defined by Government Code section 244," and that it confirmed the conclusions of our earlier opinion (11 Ops.Cal.Atty.Gen. 59, *supra*), except that now "the legislature has clearly indicated that a child . . . shall attend the schools of a district where he is actually living *even*

However, that is no longer the case because in 1977 the Legislature amended section 48201 (formerly § 16601) to remove all reference to the district where a pupil "lived" or "resided" and predicated the district for attendance instead on the "school district in which the residence of either the parent or legal guardian is located." Indeed, the one case we have found interpreting the current version of the section, *Anselmo* v. *Glendale Unified School Dist.*, *supra*, 124 Cal.App.3d 520, indicates that *it is that parental residence* which determines whether a child may enroll in a particular school district. (124 Cal.App.3d at 522-523 (tourist-visaed parents not legally resident in Glendale, child cannot attend Glendale schools).) And so we would be prompt to conclude that since the language of section 48201 and its legislative historical development indicates that the residence *of the parent* is generally the sole determinant of where a pupil must attend school, a pupil may no longer live with friends in another district to be able to attend school there, because his or her so doing is irrelevant to the section's command.

What would thus be a simply resolved opinion, however is not, for we are somewhat vexed by the penultimate sentence of section 48201: "Residency for the purpose of attendance in the public schools shall be determined by Section 17.1 of the Welfare and Institutions Code." That section provides as follows:

> "Unless otherwise provided under the provisions of this code, to the extent not in conflict with federal law, the residence of a minor person shall be determined by the following rules:
>
> "(a) The residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child.
>
> "(b) Wherever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, 'custody' means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case 'custody' means the physical custody of the child by one of the persons sharing the right to custody.
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> "(c) The residence of a foundling shall be deemed to be that of the county in which the child is found.

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though he may be living in the district for educational purposes only." (26 Ops.Cal.Atty.Gen., 269, 270, *supra*.)

As discussed, the 1977 amendment to section 48201 removed the predicate for these opinions' conclusions.

"(d) If the residence of the child is not determined under (a), (b), (c) or (e) hereof, the county in which the child is living shall be deemed the county of residence, if and when the child has had a physical presence in the county for one year.

"(e) If the child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated."

Our befuddlement quite naturally arises because section 17.1 is concerned with defining the *residence of a minor*, a factor which is quite out of place in the current version of section 48201 that speaks of a pupil attending a public school in the school district of the residence *of his parents*. The confusion is compounded by the fact that the troublesome reference to section 17.1 was added to section 48200 at the same time the latter was amended to change the predication for school attendance from the district (or city) where the child lived to the one where the residence of his or her parents is located. (Stats. 1977, ch. 36, § 204, at 186.)

When the residence of the parents (ex § 48200) is the same as the abode and thus the residence of the minor (ex § 17.1(b)), no incongruity is presented to cause a problem because both being the same, either or both can be used to determine whether a particular school district is the proper one for a pupil's attendance. That was the situation in *Anselmo* where the court was able to cite section 48200 for the proposition that "a pupil is eligible to enroll in a public school maintained by the governing board of a school district *where [his] parent resides*" *and* section 17.1(a) for the proposition that "the residence of the parent with whom a child maintains his or her place of abode . . . determines the residence of the child" to come to the conclusion that since the tourist-visaed parents had not abandoned their Italian residence, the child had not either, and "accordingly they did not meet the basic requirement of residence necessary to be satisfied to obtain [his] admission to the Glendale public schools." (124 Cal.App.3d at 523.)

But when the situation is otherwise as it is in the scenario posed to us where the minor is not abiding with the parents, then the troubling reference to section 17.1 rears its head and creates confusion. For example, had Giorgio Anselmo not abided with his parents but lived instead with friends in Glendale, and if the other exceptions of section 17.1 did not apply to him, then his residence might have been determined by "rule" (d) of section 17.1 to be the county in which he was living *if he were physically present there for more than a year*." But even then, by terms of the "rule," that would have only defined his *county of residence*, a definition which does *not*, despite what section 48200 says, help determine his "residency for the purpose of attendance in the public schools."

Clearly, the reference to section 17.1 does not quite mesh with the rest of the workings of section 48201. Its direction (residence of the minor) is not only incongruous with the direction they take (residence of the parent), but it is essentially irrelevant to making a determination of what school district a pupil should attend under them. Undoubtedly the reference is yet another example of Justice Kaus' adage that "large parts of the Education Code are not meant to be understood (*People* ex rel. *Riles* v. *Windsor University* (1977) 71 Cal.App.3d 326, 334, fn. 1 (conc. & dis. opn. quoted recently in 67 Ops.Cal.Atty.Gen. 250, 256 (1984).)

In resolving the troublesome issue, we may again apply several fundamental principles of statutory construction. The primary rule is that in interpreting a statute we must ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Moyer* v. *Workmen's Comp. Appeals Bd.*, *supra*, 10 Cal.3d at 230.) To ascertain that intent, we turn first as we did to the language used (*Tracy* v. *Municipal Court* (1978) 22 Cal.3d 760, 764) and then if necessary to "the legislative history of the statute and the wider historical circumstances of its enactment." (*Sand* v. *Superior Court* (1983) 34 Cal.3d 567, 570.) A statute's words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible." (*California Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) Again, statutes are to be interpreted "so as to make them workable and reasonable" (*City of Santa Clara* v. *Von Raesfeld* (1970) 3 Cal.3d 239, 248) and so interpretative constructions that "defy common sense, or lead to mischief or absurdity, are to be avoided" (*California Mfgrs. Assn.* v. Public Utilities Com., *supra*, at 844). Thus a "statute should not be read literally if to do so would bring about a result inconsistent with the intent of the Legislature." (*People* v. *Davis* (1981) 29 Cal.3d 814, 828.) In other words, "once a particular legislative intent [is] ascertained, it must be given effect 'even though it is not consistent with the strict letter of the statute.' [Citation.]." (*Friends of Mammoth* v. *Board of Supervisors*, *supra*, 8 Cal.3d 247, 259.)

Applying these rules we have seen that the purpose for the 1977 amendment to section 48200 was to change the general predication for the proper school district for a pupil's compulsory school attendance from the school district where the pupil lives to the school district where the residence of his parent (or legal guardian) is located. *That* would be the district in which a pupil would have to attend school and, unless it comes within an exemption to that general requirement (cf. § 48204), the residence of the pupil is beside the point in determining his or her proper school district. We do not view the penultimate sentence of section 48200 as constituting an exemption to the general directive of section 48200. Whatever other purpose it might serve, in the context of that section, the reference to section 17.1 can only be seen as providing a definition of residency that is at best incongruous and irrelevant to the basic determination that is there to be made.

We therefore conclude that a minor whose parents reside in one school district may not attend elementary or high school in another school district by living/abiding therein with "friends."

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