

BARBER BOARD: }

SCHOOLS: }

Public schools have right to teach barbering as vocational course without payment of fee as prescribed in Sec. 10134, R. S. Mo. 1939.

November 7, 1946

(Filed: #73)

Mr. Charles F. Quinlin, Treasurer
State Board of Barber Examiners
303 Frisco Building
906 Olive Street
St. Louis 1, Missouri



Dear Sir:

Your letter of recent date addressed to this office, requesting an opinion regarding the Washington Technical High School at St. Louis, Missouri, reads as follows:

"About two years ago the State Barber Board gave their permission along with other organizations in St. Louis for a Barber School to be operated at the Washington Technical High School, for colored, at 814 North 19th St., St. Louis, Mo.

"They promised the Board that they would comply with all the Rules and Regulations governing Barber Schools and to live up to our Barber Law and operate under the jurisdiction of the State Barber Board. This, they did not do. Permits were issued from this office to students until June 1st, 1946. The State Barber Board notified them that no more permits would be issued to them until they comply with the Missouri Barber Law.

"They started with eight chairs. At the present time, they are operating one there and are starting another one at Lafayette and Montgomery with ten chairs. The report came from the barber supply house that they have purchased over \$3000.00 worth of equipment. They are still operating without first complying with our law.

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"We have an opinion from your office, stating that they would have to pay their \$100.00 to operate. This they have never done. The Barber Board of Examiners is asking you for an opinion, whether or not the School Board has a right to teach barbering as a study in their vocational training?"

The question presented therein is, "whether or not the School Board has a right to teach barbering as a study in their vocational training?"

We will first consider the nature and kind of school referred to in your request and what part it plays in the State Plan. The school referred to has reference to the Booker T. Washington High School of St. Louis, Missouri, for colored, which is a public school and is a part of the St. Louis public school system, having for its purpose, among other things, the teaching of vocational training in various trades. This being a public school, it necessarily follows that it is a political subdivision of the State of Missouri as defined by Section 15, Article X, of the Constitution of 1945, which reads:

"The term 'other political subdivision', as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."
(Emphasis ours.)

In the case of State ex inf. McKittrick, Atty. Gen. v. Whittle, 63 S.W. (2d) 100, the court said, at l. c. 102:

"Respondent next contends that a school district is not a political subdivision of the state. The authorities are to the contrary. It is defined by a standard text as follows: "A school district, or a district board of education or of school trustees, or other local school organization, is a subordinate agency, subdivision, or instru-

mentality of the state, performing the duties of the state in the conduct and maintenance of the public schools.' 56 c. j. 193.

"This definition is approved by this court in State ex rel. Carrollton School Dist. v. Gordon, 231 Mo. 547, loc. cit. 574, 133 S.W. 44, 51, in which we said: 'A school district is but the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district; a purpose dignified by solemn recognition in our Constitution (section 1, art. 11 * * *), reading: "A general diffusion of knowledge and intelligence being essential to preservation of the rights and liberty of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years." In obedience to that constitutional mandate, the General Assembly has established such schools and given over to school districts, acting through boards of directors, the single duty and authority to maintain them.'

"In City of Edina to use v. School District, 305 Mo. 452, loc. cit. 461, 267 S.W. 112, 115, 36 A. L. R. 1532, we also said: 'Under the Constitution of 1875, the public schools have been entrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function and not a special corporate or administrative duty. They are purely public corporations, as has always been held of counties in this State.'

Section 10525, as amended Laws of Missouri, 1941, page 553, in part reads as follows:

"That the provisions of the act of congress enacted by the sixty-fifth congress at the

second session thereof, entitled "An act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and the trades and industries and home economics; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to authorize the appropriation of money and regulate its expenditures' * * * * *"

Section 10527, as amended Laws of Missouri, 1941, page 549, reads as follows:

"That the state board of education is hereby designated as the state board of education as provided in such acts, is charged with the duty and responsibility of co-operating with the federal board for vocational education in the administration of such acts; and is given all power necessary to such co-operation. The state board of education in submitting plans for the training of teachers, supervisors and directors of agricultural subjects, and teachers of trade and industrial and home economic subjects, as required in such acts, shall provide that they shall be trained in the state teachers colleges of Missouri, the university of Missouri, or in a school maintained in a school district of a city of seventy-five thousand or more inhabitants, in so far as their training can be provided in schools."

Section 10529, as amended Laws of Missouri, 1941, page 549, reads as follows:

"That the state treasurer is appointed as custodian of funds for vocational education as provided in such acts; and is charged with the duty and responsibility of receiving and providing for the proper custody and for the proper disbursements on requisition

of such board of education of moneys paid to the state from the appropriations made under the provisions of such acts."

Section 10532, R. S. Mo. 1939, reads as follows:

"Any approved school, department or class giving instruction in agriculture, industrial, home economics, or commercial subjects shall be entitled to share in the Federal money, conditioned that for each dollar of Federal money expended for such salaries the state or local community, or both, shall expend an equal amount. The state board of education shall recommend to each session of the general assembly the amount of money which should be appropriated by the state for such allotments during each succeeding biennial period."

Section 10540, R. S. Mo. 1939, defines vocational training and, in part, reads as follows:

"(a) Vocational education shall mean any education of less than college grade, the controlling purpose of which is to fit for profitable employment."

Section 10542, R. S. Mo. 1939, reads as follows:

"The state board of education shall establish standards for the establishment and maintenance of such schools."

Section 10134, R. S. Mo. 1939, relating to barbering, provides for the training of barber students in barber schools and as apprentices in barber shops, and in part, reads as follows:

"Nothing in this chapter shall prohibit any person from serving as an apprentice in said trade under license issued by the board under a barber authorized to practice in the same, under this chapter, nor from serving as a student in any school or college for teaching said trade under the instruction of a qualified barber: * * * Provided, that any firm, corporation or person, desiring to conduct a barber school or college in this state, shall first secure from said board a permit to do so, and shall keep the same prominently displayed. * * * *"

(Emphasis ours.)

This section applies to specially organized barber schools and licensed barbers, but does not control or affect the teaching of the vocational trades in the public school system of this state. The public school, being a part of the educational system of this state and a political subdivision thereof, is an agency of the state, supported by tax money collected for that purpose. Likewise, the Missouri State Barber Board, being a creature of the Legislature, is an agency of the state. To impose a license upon a public school for the privilege of teaching a specific course in its vocational department, would be to impose a tax or license upon a state agency; and for one state agency to tax or license another state agency would be collecting from itself, thereby placing the state in the position of taxing and licensing itself.

This section provides for the licensing only of "any firm, corporation or person" to conduct a barber school, or barbering college; and a public school, not being a firm, corporation or person, does not fall within any of these classes, it being a part of the state educational system, and, in this instance, a part of the St. Louis Public School System supported by tax money collected from that district.

In the case of State ex rel. Missouri Portland Cement Co. v. Smith, State Auditor, 90 S.W. (2d) 405, the court said, at l. c. 408-9:

"* * * If chargeable to the state and its agencies of the kind in question, it

would merely collect the amount thereof from itself, and then pay over to itself the amount so collected. * * *

In the case of City of Webster Groves v. Smith, 102 S.W. (2d) 618, the court said, at 1. c. 619-620:

"* * * Further the collocation of 'corporation' with the words 'individual,' 'firm,' 'copartnership,' etc., indicates that a private corporation and not a municipality was meant. In view of the foregoing considerations, the meaning commonly ascribed to the word 'corporation' both in popular usage and legal nomenclature and absence of language indicating a legislative intent to use it in a different sense we must assume it was used in its ordinary and commonly understood meaning and the assumption legitimately follows that had the Legislature intended to include a municipality in the act it would have done so by specific language to that effect. * * *"

Reading that part of Section 10134, supra, relative to the licensing of any "firm, corporation or person" desiring to teach barbering, it is our opinion that if the Legislature had intended for this section to apply to public schools teaching vocational barber courses, it should have said so in specific language to that effect. But since it did not expressly so state, we must then accept these terms in their ordinary and commonly understood meaning, which we do not construe to include public schools, since public schools are not firms, corporations or persons, but are state agencies.

The question presented, as indicated in the foregoing part of this opinion, is limited to the single request as to whether or not this school has a right to teach barbering as a course in its vocational training. In writing this opinion it is not the purpose or intention of the writer to overrule our former opinion written July 5, 1946, to your Board, but, rather, to enlarge upon it. This former opinion would still apply if the school in question desired to have their students recognized by the Missouri State Barber Board.

Mr. Charles F. Quinlin

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CONCLUSION

From the foregoing it is the opinion of this department that the Washington Technical High School, 814 N. 19th Street, St. Louis, Missouri, has the right to teach barbering as one of its vocational courses without being subject to the annual license fee as prescribed in Section 10134, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General