

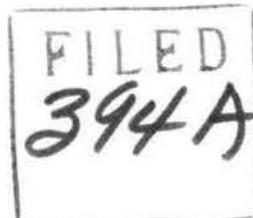
SCHOOLS:

Pursuant to Section 160.051, RSMo 1969, any child whose sixth birthday is before the first day of October after the first day of a school term shall be deemed to be six years of age for the purpose of determining eligibility for admission to school. A rule of a school board which prevents any child whose sixth birthday occurs before October first from attending school is unauthorized, invalid and void. A school board may use reasonable discretion in selecting the date which it will use to determine the age eligibility of children for the district's program of gratuitous education of children between five and six years of age. A school board may decide upon an age determination date which would permit children who are less than five years of age on the first day of the school term to enroll in such classes. However, only those children who have reached the age of five prior to October first after the first day of the school term may be counted in determining "average daily attendance" for state aid purposes.

OPINION NO. 394 A

September 25, 1970

Honorable William F. Moore
State Representative
District No. 3
4320 Bell
Kansas City, Missouri 64111



Dear Representative Moore:

This official opinion is issued in response to your request for a ruling on the following question:

"I would like to request an opinion on Chapter 160.051 relating to whether enrollment also applies to this section of chapter. Does the October 1st date apply to enrollment, if a child is six years old before October 1st or in the case of kindergarten being available, five years old before October 1st or can the respective school boards arbitrarily set other dates for enrollment as it relates to age qualification?"

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Section 160.051, RSMo 1969, provides:

"A system of free public schools is established throughout the state for the gratuitous instruction of persons between the ages of six and twenty years. Any child whose sixth birthday occurs before the first day of October after the first day of a school term shall be deemed to have attained the age of six years at the commencement of the term for the purpose of apportioning state school funds and for all other purposes. Gratuitous instruction for persons between the ages of five and six years may be provided by the board of education."

This section entitles persons between the ages of six and twenty years to receive a public school education; it also allows the board of education, at its discretion, to provide for gratuitous instruction for persons between the ages of five and six years.

The legislature, having directly granted this basic power to educate, may from time to time limit and modify this power. However, except as limited by statute, the legislature has granted to each school board the general authority to make all needful rules and regulations for the operation of the schools in its district. This authority is granted by Section 171.011, RSMo 1969:

"The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. . . ."

As previously noted, a statutory provision cannot be altered or changed by a rule or regulation of a school board.

Section 160.051 specifically states that:

". . . Any child whose sixth birthday occurs before the first day of October after the first day of a school term shall be deemed to have attained the age of six years at the commencement of the term for the purpose of apportioning state school funds and for all other purposes. . . ." (Emphasis added)

This section prescribes October first as the date school boards must use as the cut-off date in determining which children are six years of age. Therefore, any rule of a school board prohibiting a child

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whose sixth birthday occurs before October first from attending school is unauthorized, invalid and void.

Section 160.051 concludes as follows:

". . . Gratuitous instruction for persons between the ages of five and six years may be provided by the board of education."

In the case of Edwards v. St. Louis County, 429 S.W.2d 718, (1968), the Supreme Court of Missouri after discussing various rules of statutory construction said loc. cit. 722:

"In all these diverse and sometimes conflicting rules the ultimate guide is the intent of the legislature; the other rules of construction may be considered merely as aids in reaching that result; and the purpose and object of the legislation should not be lost sight of." (Emphasis added)

It is necessary, therefore, to determine whether the legislature intended by the last sentence of Section 160.051 to restrict a board of education's power to educate gratuitously in kindergarten only children who have actually attained five years of age or whether the legislature intended that a school board could deem some children to be five years old for the purposes of attending a kindergarten program.

Section 163.011, RSMo 1969, applicable to state aid for schools, provides in part as follows:

"(1) 'Average daily attendance' means the result obtained by dividing the total number of days attended of resident pupils in grades kindergarten through twelve, inclusive, and between the ages of five and twenty, by the actual number of days that the school was in session not including legal school holidays and legally authorized teachers' meetings; . . ."

Section 163.017, RSMo 1969, provides as follows:

"For the purpose of determining state aid payments under sections 163.031 and 163.033, on kindergarten attendance, 'average daily

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attendance' shall be obtained by dividing one-half the total number of days attended by resident kindergarten pupils whose fifth birthday occurs before the first day of October after the first day of the school term, by the actual number of days that the school was in session not including legal school holidays and legally authorized teachers' meetings."

Under the provisions of Sections 163.011 and 163.017, the legislature has made a statutory determination that kindergarten pupils who attain the age of five before October first after the first day of the school term are five years of age for purposes of state aid during the entire school year. Section 163.017 indicates that the legislature contemplated that there might be children attending kindergarten who were not actually five on the day the term began.

Therefore, we believe that a school district has the power to admit kindergarten pupils who are not five years old when the school term begins. Section 163.017 does not require that October first be used "for all other purposes" as is provided in Section 160.051 with reference to the determination of who is six years old. Therefore, pursuant to a school board's general power to make all needful rules and regulations for the organization and government in its district (See Section 171.011), the school board may select an age determination date for kindergarten enrollment purposes other than October first. However, we caution that only those children who have reached the age of five prior to October first after the first day of the school term may be counted in determining "average daily attendance" for state aid purposes.

The opinion of August 19, 1970, which held that a school board could provide gratuitous instruction only to children who reached the age of five prior to the commencement of instruction is hereby withdrawn.

CONCLUSION

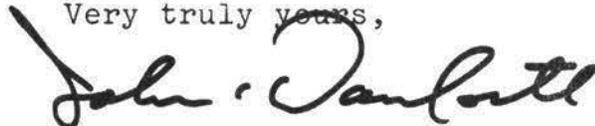
It is the opinion of this office that pursuant to Section 160.051, RSMo 1969, any child whose sixth birthday is before the first day of October after the first day of a school term shall be deemed to be six years of age for the purpose of determining eligibility for admission to school. A rule of a school board which prevents any child whose sixth birthday occurs before October first from attending school is unauthorized, invalid and void.

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It is further the opinion of this office that a school board may use reasonable discretion in selecting the date which it will use to determine the age eligibility of children for the district's program of gratuitous education of children between five and six years of age. A school board may decide upon an age determination date which would permit children who are less than five years of age on the first day of the school term to enroll in such classes. However, only those children who have reached the age of five prior to October 1 after the first day of the school term may be counted in determining "average daily attendance" for state aid purposes.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and "D".

JOHN C. DANFORTH
Attorney General