

SUPPLEMENTAL OPINION

SCHOOLS:- Sections 16 and 18 Laws 1931, pp. 343 and 344.  
Power of High and other schools to charge for  
children coming from other districts

March 14, 1933

Honorable R. Wilson Barrow,  
Prosecuting Attorney,  
Macon County,  
Macon, Missouri.

Dear Mr. Barrow:

In re authorities in support of and supplemental  
to opinion of February 20, 1933 on the validity of Section 16  
regarding the payment by school district for children attending  
high school in adjacent high school district, being that por-  
tion of same as follows:

"The board of directors of each and  
every school district in this state\*\*  
shall pay the tuition of each and every  
pupil resident therein\*\*\* (who) attends  
an approved high school in another dis-  
trict of the same or an adjoining county.\*\*\*\*

The statute further states:

"The rate of tuition paid shall not exceed  
the per-pupil cost of maintaining the school  
attended, less a deduction at the rate of  
fifty dollars paid by the state for the  
entire term\*\* and the cost of maintaining  
the school attended shall be defined as  
the amount spent for teachers' wages and  
incidental expenses. In case of an dis-  
agreement between districts as to the amount  
of tuition to be paid, the facts shall be  
submitted to the state superintendent of  
schools, and his decision in the matter shall  
be final\*\*\*\*\*

The above is an extract from Section 16, pp 343 and 344 Session  
Acts of 1931

The question has arisen as to whether this law is constitutional or not. The Constitution of the State of Missouri, Article XI, Section 1, says:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the GENERAL ASSEMBLY may establish and maintain in free public schools for the GRATUITOUS instruction of all persons in this State between the ages of six and twenty years."

In 1898 a statute (1895 Session Act) supposed to be somewhat similar was declared unconstitutional.

State ex rel Switzler, 143  
Mo. p. 287

I think that ruling in that case should not have any force or effect in construing this section, because it undertook to furnish certain pupils out of public funds while attending the University, expenses for paying board, clothing, spending money and what not etc. That was going a little too far and the court very properly held same unconstitutional. That law also had another fatal defect in that it was not uniform, but permitted only those financially unable to go to the University to obtain some purely public money for purely private purposes, and class Legislation.

In trying to carry out the foregoing provisions of the Constitution it would have been inexpedient unwise and very expensive for the Legislature to have required the smaller school district to build and maintain large buildings for the few high school pupils. So the Legislature did the expedient and least objectionable way to comply with the constitution, and this may be considered in arriving at a proper construction of the law.

Warrington v. Bobb, 56 S.W.  
(2d) (Par.1-3) 837 (March 14, 1933, No.4)

State ex rel. v. Reagan, 317  
Mo. 1216 L.A. 1224

The present laws, Session acts of 1931, Section 16, p. 343, is a broad liberal section permitting ANY ONE who has gone through the local schools to attend the adjoining high schools (if they have none of their own) on an equitable fair basis, giving any pupil in the district, rich or poor, high or low, the right to go to the neighboring high school;- if their parents are rich, these parents have to and do pay their share of taxes into the district school treasury to help pay this, and if they are poor the spirit and intention of the law is to help them and encourage them to get this education that the Constitution contemplates;- That intent is plainly shown by the wording of Article XI, Section 1, above referred to, requiring the GENERAL ASSEMBLY to establish and maintain free public schools for GRATUITOUS INSTRUCTIONS, etc. The General Assembly under Session Acts 1931, Sections 17 & 18, did this. In State ex rel Clymer, 164 Mo. App. l.c. 679, the court says:

"Now, the question arises as to whether our Statute is to be narrowly and technically construed for the purpose of shutting the doors of the school houses in the faces of many of the boys and girls, and turning them out into the street and by-ways to grow up in idleness and ignorance, or whether it shall be LIBERALLY AND BROADLY INTERPRETED IN THE SPIRIT OF OUR CONSTITUTION."

And in State ex parte Loving, 178 Mo. p. 194, l.c. 203, the court says:

"In the solution of the proposition before us, we must keep in view the familiar principle that, if there is a reasonable doubt existing as to the constitutionality of the act, SUCH DOUBT MUST BE RESOLVED IN FAVOR OF ITS VALIDITY."\*Every presumption is to be INDULGED IN FAVOR OF THE VALIDITY OF THE ACT\*\*

Farther on l.c. 220, the court says:

"We are dealing not only with a delicate and tender subject, but also an important one. Every good citizen feels a deep interest in the betterment of the condition of the children of this State; we can not be unmindful that the perpetuity of good government must depend upon the

Hon. R. Wilson Barrow.

-4-

March 16, 1933

care and attention given those into whose hands it must eventually fall.\*\*\* We have reached the conclusion that the act before us is a valid exercise of the legislative power, under the Constitution of this State. While this conclusion is reached, the question as to the constitutionality of this act is not without doubt; but following the well-settled doctrine upon this subject, all reasonable doubts must be resolved in favor of the validity of the act. This we have done in this case."

And that is what I have tried to do in the opinion written on February 20, 1933, uphold the legality of Section 16 of the school laws of 1931, page 343. See Warrington v. Bobb Supra

Very respectfully yours,



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Assistant Attorney General.

APPROVED

ROY McKITTRICK  
Attorney General.

GBS:GE