

X
(COMMISSION FOR THE BLIND - Scope of, powers and duties of.)

October 27, 1933.



Mrs. W. E. Ryder,
Executive Director,
Missouri Commission for the Blind,
7 Westminister Place,
Louis, Missouri.

Dear Mrs. Ryder:

A request for an opinion has been received from you under date of October 5, 1933 in the following terms:

"I am in receipt of a letter dated October 3, 1933, from Mr. S. M. Green, Superintendent of the Missouri School for the Blind, 3815 Magnolia Avenue, this city, which reads as follows:

'Robert D. Ray, age 11 years, of 1209 Chambers Street, St. Louis, Missouri, has been attending the Michael School for Crippled Children for the past two years. He is unable to walk alone, and within the past year has become blind so that he is unable to progress any further in this school. He is in such physical condition that we cannot receive him here as he requires a wheeled chair and special help all of the time. Would you consider it within your province to have a home teacher visit him for the purpose of teaching him braille? If so, I have a letter from Dr. J. H. Humphrey of the Board of Education concerning his disabilities which may be helpful to the home teacher designated.'

I have answered Mr. Green's letter in the following manner:

"I am in receipt of your letter of October 3rd regarding the education of Robert D. Ray, who is crippled and blind.

May I ask for a little time before giving a definite answer about a home teacher of the Missouri Commission for the Blind accepting him as a pupil. I have studied the law outlining the duties of the Commission very carefully and seem to find no intimation that the education of blind children, regardless of other handicaps, are our problem.

I am still pondering the justness of the money taken from our appropriation for Leonard Dowdy's education at Perkins Institution, and would like to go into this subject a little deeper before giving an opinion.

I appreciate the problem you are facing in connection with Robert

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Ray and assure you that I am anxious at all times to work in hearty cooperation with you, however, I hesitate to deviate from the duties assigned under the law, especially in the face of our limited appropriation for this biennium.'

This question of the Missouri Commission for the Blind undertaking the education of blind children, who because of an additional handicap, seem not to be eligible to the Missouri School for the Blind, is an old one and in order that we may have a correct interpretation I am placing the question before you.

Up to the present we have felt that our duty in relation to blind children was to seek them out, secure complete census data, including an eye examination to determine whether they were blind, and if their eyes would respond to treatment. After such information was received then all preschool and children of school age whose vision comes within the category of blindness were referred to the Missouri School for the Blind for elementary education.

The rehabilitation and training (including the teaching of braille) of persons who were blinded in adult life, seem to be clearly the duty of the Missouri Commission for the Blind and form a definite part of our program, as well as the other duties as outlined in the law creating the Missouri Commission for the Blind.

The other matter I place before you is the justness of the appropriation of \$2400.00 made by the last legislature (Section A-1, page 138, Laws of Missouri 1933) for the education of a deaf-blind child at Perkins Institution, Watertown, Massachusetts, from funds derived from a special tax levy apparently for prevention of blindness and for the adult blind.

Your opinion on these two questions is respectfully requested."

I. CASE OF ROBERT D. RAY

(A) There is nothing in the Constitution of Missouri to prohibit the granting of educational assistance to Robert D. Ray along the lines set out in your inquiry. The Constitution of Missouri, Article IV, Section 47, contains the following proviso: "PROVIDED FURTHER, That nothing in this Constitution contained shall be construed as prohibiting the General Assembly from granting, or authorizing the granting of, pensions to the deserving blind, as may be provided and regulated by law: PROVIDED FURTHER, That the General Assembly of the State of Missouri shall cause an annual tax of not less than one-half of one cent nor more than three cents on the hundred dollars valuation of the taxable property of the State to be levied for the purpose of providing a fund to be devoted in the manner provided by law to the pensioning of the deserving blind. If any balance shall exist in such fund after the deserving blind have been pensioned, then the same, or so much thereof as may be necessary, may be used for the support of the commission for the blind."

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In the case of *Shelley v. Missouri Commission for the Blind*, 309 Mo. 612, 274 S. W. 688 (1925) the Supreme Court declared that the General Assembly has the right to define the term "deserving blind" such part of the opinion of the court being as follows:

"The Constitution, Article IV, Section 47, authorized the General Assembly to grant 'pensions to deserving blind, as may be provided and regulated by law.'

Under that provision of the Constitution the Legislature no doubt had a right to define 'deserving blind,' to determine who and by what tests one should come within the provisions of any law it might enact to pension blind persons." (309 Mo. 620.)

Furthermore, the last sentence quoted above of the constitutional section allows any balance to go to the Commission for the Blind and does not contain any limitation on the use to which such balance may be put by the Commission for the Blind in the event the Legislature appropriates any of such balance to such Commission (except the implied limitation that it must be used for some sort of relief or education of blind persons) so that nothing in the Constitution would prohibit the relief in question for Robert D. Ray.

(B) Nothing in the statutes of Missouri would prohibit such relief, so that the only question would be whether or not Revised Statutes of Missouri 1929, Section 8889, which fixes the powers of the Commission for the Blind, would authorize the use of any of the funds appropriated to such Commission for the purpose in question. By Laws of 1933, page 190, the Commission for the Blind is declared to consist of the members of the Board of Managers of the State Eleemosynary Institutions, and it is declared that "wherever in any law the Commission for the Blind is referred to it shall, after the taking effect of this act, be construed as referring to the members of the said Board of Managers of the State Eleemosynary Institutions, who are by this act designated and constituted the members of said Commission for the Blind."

Section 8889 above referred to provides in part as follows:

"The duties of said commission shall be * * * to investigate and report to the General Assembly from time to time the condition of the blind within this state, with its recommendations concerning the best method of relief for the blind; * * * to act as a bureau of information for the purpose of securing employment for the blind of this state elsewhere than in the shops and workrooms of the Commission, and to this end the commission is authorized to procure and furnish materials and tools and to furnish aid and assistance to blind persons engaged in home industries * * *; to ameliorate the condition of the blind by such means consistent with the provisions of this article as the commission may deem expedient; * * * the object and purpose of this article being to encourage capable blind persons in the pursuit of useful labor * * *."

From the above excerpts taken from Section 8889, especially the under-

lined portions, it can be observed that in this section as well as in the constitutional provision above quoted there is no attempt to differentiate between blind persons of different ages and, in fact, there is nothing in Chapter 50 of the Revised Statutes being Sections 8888-8892, which indicates a purpose to differentiate between blind persons who are children and those who are adults. Furthermore, one of the chief purposes of the commission as set out in the excerpts above from Section 8889 seems to be to train and educate blind persons in such a way as to make them capable of useful labor, and there is no reason to believe that such labor is confined to manual labor as opposed to intellectual labor, and, in fact, the whole public school system of this state would seem to indicate that the state is more interested in requiring an education intellectually than it is in requiring an education in manual training. Furthermore, all of the provisions of Section 8889 above quoted are of a rather general nature, and read together seem to indicate an intention on the part of the General Assembly to allow the Commission for the Blind some latitude in choosing its methods for educating blind persons and training them. No construction which would throw any light on the present inquiry has been made by any of the courts of Missouri regarding Section 8889, so that the only judicial authority which might bear on the question is found in cases dealing with the general attitude of the courts of this state toward the right of all persons to receive a free education. Such an attitude is enunciated in the case of *State ex rel Halbert v. Clymer*, 164 Mo. App. 671, 147 S. W. 1119 (1912) wherein the court said:

"The policy of this state is to educate, and to furnish free of charge, good schools for all children of school age, and even to compel the attendance of children thereto. Section 1 of article 11, of the state Constitution, reads: 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties 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.' It is therefore the duty of the courts to liberally construe our statutes relating to schools, and in such a manner as to open, and not to close, the doors of the schools against the children of the state." (164 Mo. App. 676.)

Likewise, in *Northern v. McCaw*, 189 Mo. App. 362, 175 S. W. 317 (1915) the court said:

"Bearing in mind the duty to liberally construe the school laws (*State ex rel. Halbert v. Clymer*, 164 Mo. App. 1. c. 676, 147 S. W. 1119) so that the advantage of securing an education can be made as free as possible to the girls and boys of Missouri, we have no hesitancy in reversing this judgment * * * * (189 Mo. App. 370).

Various indications of legislative policy show that the attitude of

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the General Assembly is also very liberal in dealing with free education and especially the education of the blind. The following manifestations of such legislative policy might be cited:

(1) Revised Statutes of Missouri 1929, Sections 9218-9221. In these sections the Legislature has provided for special classes for the instruction of children who are blind, deaf, crippled or feeble-minded, and especially Section 9221 provides that the state board of charities and corrections (which was abolished by Laws of 1933 page 400 with many of its duties now imposed upon the Board of Managers of State Eleemosynary Institutions, as, for example, by Laws of 1933, page 169 imposing such duties with respect to the "care, importation, supervision and placing of children,") is authorized to provide special educational training for children under the age of sixteen years who are defective in the sense above set out. In cases where the county in which such children live has not enough of any of the above classes of defectives either in such county or in conjunction with neighboring counties to make up a sufficient number for class instruction under the three preceding sections, in such cases the board of charities and corrections was authorized to charge the expenses involved to the county of residence.

(2) Article 23 of Chapter 57 of the Revised Statutes of Missouri of 1929, such article consisting of Sections 9688-9711 establishes a school for the blind and a school for the deaf and it is a further manifestation of legislative generosity toward these classes of defectives.

(3) Revised Statutes of Missouri 1929, Section 9700 providing a reader for any blind person in attendance at any higher educational institution in this state authorized to grant degrees.

(4) The appropriation for the tuition of Leonard Dowdy, Jr. being found at Laws of 1933, page 138, shows a clear legislative intent that persons who are blind but unable to attend because of an additional defect one of the regular institutions of this state are intended to be within the legislative generosity.

(5) Revised Statutes Missouri 1929 Section 8565 provides in part as follows:

"The board of each institution shall have authority to make all necessary rules, regulations and by-laws for the government, discipline and management of such institution not inconsistent with the laws of this state, * * *"

This Board, which now acts as the Commission for the Blind is, as can be observed from this statute, given rather comprehensive powers (Board of Managers of State Eleemosynary Institutions.)

For the above reasons it is our opinion that the Commission for the Blind is not prohibited by law from providing home teaching for such blind persons as have additional defects which prevent them from attending regular

classes or schools for the blind, and that under the law of Missouri such Commission would have the right, in its discretion, to provide such home instruction.

II. APPROPRIATION FOR LEONARD DOWDY, JR.

The arguments and conclusions set out above would apply with equal force to the payment of the tuition of Leonard Dowdy, Jr., as provided for in the appropriation found at Laws of Missouri, 1933, page 138, because if individualized instruction for a child who is blind and crippled is authorized by law the same arguments would apply to individualized instruction for a child who is blind and deaf. The appropriation act just mentioned provides funds for "tuition and expenses". If this child were not blind and deaf that part of the appropriation providing for his expenses would probably be unconstitutional under the authority of State ex rel Garth v. Switzler, 143 Mo. 287, 45 S. W. 245 (1898) which holds that the expenses of a student in attendance at a school of this state cannot be paid by the state but where a student is blind such decision would not apply because the Constitution specifically in Article IV, Section 47, above quoted, allows grants to blind persons and for the work of the Commission for the Blind.

Since there is no constitutional prohibition to such an appropriation the matter is entirely in the hands of the Legislature, and the Legislature has manifested its will by the Appropriation Act and such manifestation is not subject to review by a court.

"We shall not discuss the fundamentals in statutory construction, when the validity of a statute is at stake. It goes without saying that there is a legal presumption of validity; that if there is doubt as to the constitutionality of the law the doubt shall be resolved in favor of the validity of the legislative act; that the expediency or in expediency of the act is not for the courts; that in Missouri the power of the Legislature to enact laws has no limitation, except the express limitations in the State and Federal Constitutions;" (State ex rel Barker v. Merchants Exchange of St. Louis, 269 Mo. 346, 356, 190 S. W. 903 (1916).

As to the right of the General Assembly to appropriate for one purpose funds which were collected for another purpose, it was stated by the court in State ex rel Fath v. Henderson, 160 Mo. 190, 60 S. W. 1093 (1901):

"That although this tax is set apart into a special fund, it still belongs to the state, and may be appropriated to another and different use." (160 Mo. 214)

This problem is really not in issue in the present situation because by Constitution of Missouri Article IV, Section 47, the General Assembly can appropriate funds collected for pensioning the deserving blind to the work of the Commission for the Blind, and it is in the discretion of the General Assembly to fix the

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scope of the work of the Commission for the Blind and it has declared by the Appropriation Act in question that it considers the education of Leonard Dowdy, Jr. within such scope.

Thus, in answer to the second question it is our opinion that the appropriation for Leonard Dowdy, Jr. is not subject to judicial review.

Very truly yours,

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.