

SCHOOL DISTRICTS:

Where there are less than eight colored children of school age in a school district, they shall be sent to school in the nearest district where separate colored schools are maintained.

September 29, 1933.

10-4

FILED
So

Mr. Henry C. Salveter,
Prosecuting Attorney,
Sedalia, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"We have a rural school district in Pettis County in which there is just one negro family, of which there are five children of grade school age. The school board has contracted to employ a white school teacher to instruct these five colored children in her home, and carry on a system of class work as is done in the ordinary and regular rural school. The negro parents refuse to allow their children to go to this white teacher, who is qualified under the law as a teacher and has her duly issued school certificate.

The problem now before us is whether or not under the law these children can be compelled to attend school under the instruction of this white teacher. Sections 9216 and 9217, R. S. Mo. 1929, have to do with schools for colored children. Is it your understanding of the law that these children can be compelled to attend school as above named, or do you regard it as mandatory upon the school district to furnish transportation so that these children can be sent to some other colored school in the county? The facts are that the school district can provide proper training for these children as above mentioned at far less cost than they can by furnishing transportation and paying their tuition in some other district."

Section 9216, R. S. Mo. 1929, provides as follows:

"Separate free schools shall be established for the education of children of African descent; and it shall hereinafter be unlawful for any colored child to attend any white school, or for any white child to attend a colored school."

Section 9217, R. S. Mo. 1929, provides as follows:

"When there are within any district in this state eight or more colored children of school age, as shown by the

last enumeration, the board of directors of such school district shall be and they are hereby authorized and required to establish and maintain within such school district a separate free school for said colored children or in lieu thereof shall pay the transportation and the tuition charges to any district in the county wherein a school is maintained for colored children. Provided if the number of colored children enumerated is less than eight they shall have the privilege and are entitled to attend school in the nearest district in the county wherein a school is maintained for colored children and the transportation and tuition charges incurred shall be paid; said transportation shall not exceed five dollars per month and tuition charges shall not exceed the pro rata cost of instruction. * * *

In view of the foregoing sections it is apparent that separate schools must be maintained for colored children and white children. Under section 9217, where the last enumeration shows eight or more colored children of school age, the board of directors of the school district are required to establish and maintain within such school district separate free school for colored children, or in lieu thereof to pay the transportation and tuition charges to the district in which such school is maintained. Under the same Section, where the enumeration is less than eight the children are entitled to attend school in the nearest district wherein a school is maintained for colored children, and the transportation and tuition incurred shall be paid by the district.

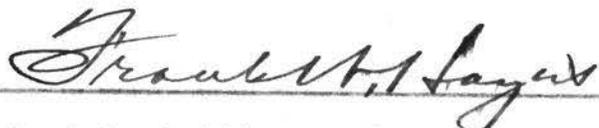
In your inquiry you state that there are five colored children of grade school age in the district. Under Section 9217, they are entitled to attend school in the nearest district in the county where a school is maintained for colored children, and the transportation and tuition charges incurred shall be paid by the district. The only limitation placed thereon is that the transportation shall not exceed five dollars a month, and the tuition charges shall not exceed the pro rata cost of instruction. The fact that the school district can provide proper training by having a white teacher teach them in her home does not comply with the requirements of the statute. The statute provides that where there are eight or more children of school age the school board may establish a separate school, or may transport the children to a school in another district. It further provides that if the number of children is less than eight, they shall be entitled to be schooled in the nearest district which maintains a school for colored children. We do not believe that said children may be required to accept private instructions in the home of a white teacher instead of being sent to a colored school in the nearest district. If employing a white teacher to teach these children in her home would be considered as maintaining a school for said colored children, it is very

September 29, 1933.

doubtful whether the district would have any legal authority to expend school funds for that purpose, for the reason that the statute does not authorize the maintaining of a public school in a district where the number of children is less than eight, but expressly provides that they shall be transported to a public school in the nearest district. It is only where there are eight or more children that the school board has the option of establishing a separate school for colored children or in lieu thereof paying for their education in another district.

It is therefore the opinion of this Department that where there are only five colored children of school age in the district, that they are entitled and should be sent to a school in the nearest district which maintains a separate school for colored children. The transportation and tuition charges incurred therefor are to be paid by the district.

Very truly yours,



Assistant Attorney General.

FWH:S

APPROVED:

Attorney General.