

PUBLIC SCHOOLS: Any pupil between ages of 6 and 20 has right to do eighth grade work over after having received diploma and has right to use of free text books.

October 14, 1933.

10-14



Mr. J.E. Stoops,
Clerk and Member of School Board,
District No. 90,
R. F. D. #9,
Springfield, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of September 30, which reads as follows:

"As Clerk of the School Board I am asking an opinion on the following question, which is before the Board at present.

We have a girl who was given a diploma last year from the eighth grade. It is her desire, as well as her parents, for her to take the grade over again this year. Our County Superintendent has advised us it is contrary to law to allow her to do so. I contend the State Constitution gives to every child the benefit of the public school from 6 to 20 years, and the fact she has been given the diploma from the eighth grade does not deter her from the school for the purpose of taking the work over again. The County Sup't. says the State Sup't. has ruled the Board can not allow her the use of the free books which are furnished in our school or any funds of the district cannot be used for her benefit after she is given a diploma.

Is she not entitled to the public school so long as she does not ask for any additional course of study than is taught in the eighth grade work?"

The Constitution of Missouri, Sec. 1, Art. XI, p. 146 entitled "Free Schools--School Ages", provides as follows:

"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."

Sec. 9433 R.S. Mo. 1929 makes it compulsory for a child to attend school between the ages of six and fourteen years, but contains no provision prohibiting a child attending school after attaining the age of fourteen years.

In the case of Roach v. The Board of President and Directors of the St. Louis Public Schools, 77 Mo. 484, l.c. 488, the Court refers to the above section of the Constitution as follows:

"The provisions of the 1st and 6th sections of article 11 of the Constitution of the State, taken together, are conclusive on this point. The 1st section in effect declares that all persons in the State between the ages of six and twenty shall be gratuitously instructed in the free public schools therein provided for, and the 6th section in like manner declares that the 'public school fund' therein mentioned, shall be faithfully appropriated for establishing and maintaining the 'free public schools' provided for in said article, and for no other uses or purposes whatsoever. The two sections, taken together, amount to both a requirement and a prohibition. By the first, free public schools for the gratuitous instruction of all persons in the State between the ages of six and twenty are required, but by the sixth, the funds thus dedicated to that use are prohibited from being expended for any other uses or purposes whatsoever."

In view of the constitutional right which a child has of attending school from six to twenty years of age, the child mentioned in your letter has the right to attend school and again take the eighth grade work.

Oct. 14, 1933.

As to the question of furnishing the child free text books, we refer you to Sec. 9506, R.S. Mo. 1929, the pertinent part being as follows:

"The qualified voters of any school district in the state may at any annual or special school meeting, fifteen days' notice having been given as required in section 9283, vote to authorize the board of directors or board of education of such district to purchase from the incidental fund and furnish free all the textbooks for all the pupils in the public schools of said district. A majority vote of those voting upon this proposition shall be sufficient to decide the question. In the event the incidental fund is not sufficient to supply all the books during the first year, then the board shall supply as many grades of their school or schools as possible beginning with the lowest grade and shall furnish free textbooks to all the pupils of all the elementary grades within a period of three years from the date of the school meeting at which it was decided to furnish free textbooks. Such books shall be the property of the district, but shall be furnished free of charge to all public school pupils for use in the public schools of said school district, under such rules and regulations as the board of directors or board of education shall prescribe. ****"

The above section contains no provision prohibiting a child who has finished the eighth grade from the use of free text books, the same being "for all the pupils in the public schools of said district", and the other provision is that the Incidental Fund must be sufficient.

It is the opinion of this department that the child in question is entitled to the use of the free text books the same as any other student who is attending the school and who has not finished the eighth grade.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,
Attorney General