

SCHOOLS: Right of children of transients to attend free public schools in Missouri.

10-22

October 12, 1934.



Honorable Henry C. Salveter
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Sir:

Your letter of September 11, 1934, requesting an opinion from this office is as follows:

"I desire your opinion relative to the following propositions:

"Several months ago the Federal Government established a Transient Bureau at Sedalia, Missouri. At this time there are approximately twelve young men whom the officials of the Transient Bureau desire to have admitted to the Sedalia High School, without the payment of tuition. The Government, through the Transient Bureau, also have approximately eight families for whom it has rented houses here in Sedalia. According to the records of the Transient Bureau, all these families have what is termed their legal or permanent residence, and Sedalia listed as their temporary residence. Some four or five of these families have their legal or permanent residence listed as being in other States. The Government, according to my information, pays the rent for these families and is also providing food for them. Each of these families has children who at this time are attending the grade schools.

"The school board has refused to admit the young men from the Transient Bureau. None of them has Sedalia as a permanent residence, but are merely what may be termed 'floaters', going from one part of country to another, and as we use t

the expression, 'living wherever their hat is.' The school board objects to the young men from the Transient Camp desiring to attend High School, for the reason that they fear they will have a demoralizing influence and may bring diseases into the school. The board further objects because it is low on funds, and this additional number adds just that much increased cost. With reference to the children from the homes, above named, attending the grade schools, the board has no objection on a moral ground, but does not like this additional burden on teachers and cost without having tuition.

"Does the board have the right to refuse to admit the young men from the transient bureau unless tuition is paid?

"Would the board also have the right to refuse them admittance on the theory that they were undesirable persons to have associated with boys and girls in the High School?

"Does the board have the right to refuse children from transient families who are living in Government rented houses at Sedalia, and are now attending the grade schools, until tuition is paid, or in other words, can the board charge tuition for the children attending grade schools?

"The school board is greatly concerned concerning the above matter, as well as the officials of the Transient Bureau, and, therefore, this office would appreciate the earliest consideration which your department can give to the opinion."

Missouri Constitution, Article XI, Section 1,
provides:

"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."

Residence for purpose of claiming right to attend public schools is determined by the intention of the guardian of said child or children who are under the surveillance of the transient bureau at Sedalia. The records of the Transient Bureau are but mere evidences of residence and at best only speak the intention of the transient at the time that said transient made the record for the Bureau. Such record should not be taken as conclusive evidence of non-residence, at all events disbaring the children of transients the right to attend free public schools in this State. As a matter of criminal law, it is compulsory for children of school age to attend school in this state and the law compelling attendance does not exempt them for non-residence.

Section 9433, R. S. Mo. 1929, provides:

"Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and fourteen years shall cause such child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which said child attends is in session, or shall provide such child at home with such regular daily instruction during the usual hours as shall, in the judgment of a court of competent jurisdiction, be substantially equivalent at least to the instruction given the

children of like age at said day school in the locality in which said child resides; and every parent or person in this state having charge, control or custody of a child between the ages of fourteen and sixteen years, who is not actually and regularly and lawfully engaged for at least six hours each day in some useful employment or service, shall cause said child to attend regularly some day school as aforesaid: Provided, that a child between the ages aforesaid may be excused temporarily from complying with the provisions of this section, in whole or in part, if it be shown to the satisfaction of the attendance officer, or if he declines to excuse, to the satisfaction of a court of competent jurisdiction, that said child is mentally or physically incapacitated to attend school for the whole period required, or any part thereof, or that said child has completed the common school course as prescribed by constituted authority, or its equivalent, and has received a certificate of graduation therefrom".

Section 9207, R. S. Mo. 1929, provides how non-resident pupils are admitted.

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district-- said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules

may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: Provided, that the following children, if they be unable to pay tuition, shall have the privilege of attending school in any ^{city} district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support: Provided further, that any person paying a school tax in any district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax."

It is to be noted that the right of attendance is not at all events dependent on residence but a temporary home is all that the law requires under the different provisos above set out.

School laws in Missouri have always been construed liberally by our courts so that the advantages of securing an education will be as free as possible. In the case of State ex rel. 164 Mo. App. 671, l. c. 678; 147 S. W. 1119, the appellate court held that a child, residing with its grandfather under an agreement with the child's father, not made solely for the purpose of sending the child to school, is entitled to attend school where his grandfather resides without paying tuition and at l. c. 1120, the court said:

"The statute is not ambiguous, and plainly provides that children who

are unable to pay tuition, and whose parents are not contributing to their support, shall have the privilege of attending school in any district in which they may have a permanent or temporary home. It will be noticed that the privilege is granted, regardless of the residence or domicile of the parent."

Later at l. c. 1121, the court said:

"We have not overlooked the point forcibly made in appellants' brief that the Steelville district is largely maintained by tuition fees received from non-resident pupils, but we do not believe that the effect of this decision will be to deprive the school of such fees."

Now, considering the right of the school board of Sedalia to make reasonable rules whereby pupils are suspended and expelled for conduct demoralizing to the school, we have already seen that Section 9207 provides for such rules.

Then tho, children may be required to submit to examination by a physician where there is danger of them carrying contagious or infectious diseases into this school.

Section 9208, R.S. Mo. 1929, provides:

"It shall be unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to the same. For the purpose of determining the diseased condition, or the liability of transmitting such disease, the teacher or board of directors shall have power to require any child to be examined by a physician or physicians, and to exclude such child from school so long as there is any liability of such

Honorable Henry C. Salveter -7- October 12, 1934.

disease being transmitted by the same. A refusal on the part of the parent or guardian to have an examination made by a physician or physicians, at the request of the teacher or board of directors, will authorize the teacher or board of directors to exclude such child from school; and any parent or guardian who shall persist in sending a child to school, after having been examined as provided by this section, and found to be afflicted with any contagious or infectious disease, or liable to transmit the same, or after having refused to have such child examined as herein provided, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five nor more than one hundred dollars.

CONCLUSION.

It is the opinion of this office that children of school age of transients, temporarily located in the Sedalia school district should be admitted to the public schools of that district without paying tuition, where it be shown that they are unable to pay tuition, and their parents do not contribute to their support but are supported by charity. These facts are admitted in your request. Fears of demoralizing conduct is no ground for a child's exclusion. Proof of immoral conduct after notice and a hearing upon charges preferred is sufficient grounds for suspension or expulsion under the statutes. These unfortunate children have a constitutional right to an education in Missouri, and their attendance in school is compulsory under our statutes. The fact that they add to the cost of running the school without paying tuition does not alter the law in such cases, nor does the effect of this opinion deny the school board fees that they could ever hope to collect.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK