

SCHOOLS: Rules and regulations if reasonable may be promulgated
by School District.

February 21, 1935.



Hon. W. W. Graves
Prosecuting Attorney
Jackson County
Kansas City, Missouri

Dear Mr. Graves:

This is to acknowledge your letter as follows:

"I am enclosing herewith a letter from Mr. H. McMillan, Superintendent of Public Schools at Lee's Summit, Missouri, which I will please thank you to answer."

Mr. McMillan's letter reads as follows:

"I should like to be legally advised upon the following matters:

(1) A rural school district legally owes Lee's Summit District 79 tuition for the year 1931-'32. What steps should be taken to collect the money? Who would pay the cost of collection, the rural district or our district? By way of explanation, this item is under the 16th section of the 1931 School Law.

(2) Do school officials have the right to search school lockers that have been and are used by pupils in which to keep their books, clothing, and other personal belongings.

"(3) Do school officials have the legal right to require non-resident pupils to leave the keys to their automobiles in the office during the hours of school, namely from 9:00 to 4:00. It is assumed that non-resident pupils, as well as others, are under the jurisdiction of the school from the time they leave home until they return home, and therefore the school has a legal right to enforce rules (reasonable) pertaining to their discipline and management. Does the school have a legal right to require some non-resident pupils to leave their keys in the office and not require others to do so? The explanation, of a possible difference of treatment, being that some pupils drive carelessly during the noon hour and also go joy riding and thus go many miles from school premises with a possibility of having a serious accident, while other students use their automobiles wisely.

I should like to receive legal information covering the above problems. In case your office does not care to decide, will you please forward my request to the Attorney General of Missouri and request that an early reply be given?"

I.

On September 14, 1934, this Department rendered an opinion to Honorable Chas. A. Lee, wherein it was held, among other things, the following (page 4):

"Section 16, Laws of Missouri, 1931, page 343, amended Laws of 1933, page 393, provides in part as follows:

'The board of directors of each and every school district in the state

" * * * * * shall pay the tuition of each and every pupil * * * * *. (that attends a high school in an adjoining district.)

"The above section is mandatory upon the board of directors and if such do not pay the tuition of a pupil resident in their district who attends a high school located in an adjoining district, then, in our opinion, a debtor and creditor relationship exists between the sending district and the receiving high school, and such receiving high school could maintain an action at law for debt against the sending school district."

See also,

State ex rel. Mildred Burnett v. School District of City of Jefferson, 74 S. W. (2d) 30.

In answer to your first question, it is our opinion Lee's Summit District, debtor, could sue the creditor school district for debt and such suit would be the same as any other civil action. Costs incurred would be taxable according to the provisions relating to civil actions.

II.

Your second and third questions are related, hence we shall treat them as one question in our discussion.

Section 9207, R. S. No. 1929, in part provides as follows:

"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, * * * * *."

Volume 56, Corpus Juris, page 852, Section 1088, reads in part as follows:

"As a general rule a school teacher, to a limited extent at least, stands in loco parentis to pupils under his charge, and may exercise such powers of control, restraint, and correction over them as may be reasonably necessary to enable him properly to perform his duties as teacher and accomplish the purposes of education, subject to such limitations and prohibitions as may be defined by legislative enactment, * * * * *. The teacher's power and duty extend beyond the teaching and preservation of order and discipline to matters affecting the morals, health, and safety of his pupils. He may and should do everything he deems necessary to these ends, when they are not in conflict with the primary purposes of the school or opposed to law or rule of the school board."

Section 1089 reads as follows: (C. J. Vol. 56)

"In the exercise of his power to control and maintain discipline in his class, a teacher may adopt any reasonable rule or regulation concerning matters not provided for by the rules prescribed by the school board, and not inconsistent with some statute or other prescribed rule."

"The teacher's rules may be supplemented by rules promulgated by the superintendent of schools, where, under a board rule, it is his duty to visit the schools periodically and to supervise and direct the teachers in their methods of instruction."

Section 1090 provides in part: (C. J. Vol. 56)

"As a general rule the school board which by statute has the general charge and superintendence of the public schools has power to adopt appropriate and reasonable rules and regulations for the discipline and management of such schools, such as a rule requiring that there shall be prompt attendance, diligence in study, and proper deportment, and the decision of such board, if exercised in good faith, on matters affecting the good order and discipline of the school is final so far as it relates to the rights of pupils to enjoy school privileges, and the courts will not interfere with the exercise of such authority unless it has been illegally or unreasonably exercised; * * * * *"

Section 1091 provides in part as follows: (C. J. Vol. 56)

"A rule or regulation in regard to the discipline and management of a public school, whether adopted by the teacher or by the school board must be reasonable in itself. * * * * * Whether a rule or regulation is reasonable and valid is a question of law for the court."

In Pugsley v. Sellmeyer, 250 S. W. 538, the Supreme Court of Arkansas held that the following rule promulgated by a school board was not unreasonable:

"The wearing of transparent hosiery, low-necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited."

In the above case the pupil infringed the rule by using talcum powder and was expelled. The court, page 539, said:

"Was the rule in question a reasonable one, and did the directors have the right to make and enforce it? We answer this question in the affirmative."

And further,

"In the discharge of the duty here imposed upon us it is proper for us to consider whether the rule involves any element of oppression or humiliation to the pupil, and what consumption of time or expenditure of money is required to comply with it."

And further,

"The courts have this right of review, for the reasonableness of such rule is a judicial question, and the courts will not refuse to perform their functions in determining the reasonableness of such rules, when the question is presented. But, in doing so, it will be kept in mind that the directors are elected by the patrons of the schools over which they preside, and the election occurs annually. These directors are in close and intimate touch with the affairs of their respective districts, and know the conditions with which they have to deal."

In King v. Jefferson City School Board, 71 Mo. 628, the court held (quoting from the syllabus):

"The court will interfere to prevent the enforcement by a district school board of a rule which manifestly reaches

"beyond their sphere of action, and relates to subjects nowise connected with the management or successful operation of the school, or which is plainly calculated to subvert or retard the leading object of our legislation on this subject; but the case should be a plain one. A rule which subjects any pupil absent six half days in four consecutive weeks, without satisfactory excuse, to suspension, does not belong to either of these classes, and will be enforced by the courts without inquiry whether it is a reasonable and proper one or not. This court, however, is of opinion that such a rule is reasonable and proper."

We quote from the syllabus of the case of Wright et al. v. Board of Education of St. Louis, 246 S. W. 43 (Mo. Sup.):

"A regulation of the St. Louis board of education, forbidding membership of high school pupils in secret organizations, and not allowing pupils violating the regulation to represent the school in any capacity or to participate in graduation exercises, held not authorized by Rev. St. Sec. 11457, as to powers of such boards of education; for no rule should be adopted which attempts to control the conduct of pupils out of school hours after they have reached their homes which does not clearly seek to regulate actions, which, if permitted, will detrimentally interfere with the management and discipline of the school."

A review of many cases shows that the courts look to the facts in determining whether or not a rule promulgated by a school board is proper. It may safely be said that a rule that does not discriminate or is not unreasonable or does not cause

humiliation to the pupil and is for the purpose of promoting the interest of the pupil, will be held valid by the courts. In this connection, however, it should be borne in mind that when the pupil is in attendance at school the board exercises a degree of paternalism toward the pupil. However, after the pupil leaves the school premises the right of supervision over the child is reverted to the parents.

You inquire if the school officials have the legal right to search school lockers? In our opinion, we believe that the board could make a rule or regulation to the effect that all school lockers shall be subject to inspection at reasonable times. Of course, this rule should not be abused.

As to the right of the school officials to require pupils to leave car keys to their automobiles in the office during school hours, we are constrained to hold in the negative. However, we do believe that the board would have the right to promulgate a rule requiring that no pupil shall, during school hours, be permitted to use an automobile except with ~~the~~ special permission. If such a rule is promulgated it will have the same effect as requiring the pupils to leave the keys to their automobiles at the office during school hours. The cooperation of the parents in regard to these matters should be solicited.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG