

SCHOOLS: Any person between the age of 6 and 20 years, unless defective, has a right to attend public schools.

9.17  
September 10, 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 copy of a letter from Mr. H. McMillan, Superintendent of Schools, Lees Summit, Missouri, which is self explanatory.

"Will you kindly furnish Mr. McMillan with the information he desires."

Mr. McMillan's letter, in part, reads as follows:

"The compulsory age of school attendance begins at SEVEN. Free education begins at SIX. Does a school board have the legal right to keep pupils from attending school until they are seven?

"The background for this question is as follows: When pupils are permitted to enter the First Grade at the chronological age of six, there are those whose mental age, or the age of the mind, is not six, and therefore cannot do First Grade work and they FAIL, Get A DISLIKE FOR SCHOOL, AND HAVE TO REPEAT THE WORK. For example, it is possible, AND IT DOES HAPPEN, that a child, who has

lived six years and has a mind of an average four or five year old child, enters the First Grade. It is obvious that the child cannot do the work required of children whose minds are six years of age. It would be better to keep this child out of school another year to let his mind grow older so that he could come more nearly doing good First Grade work and consequently get a better foundation for later work. In some cases, some children should not start to school until the age of eight. Of course, this case could not be enforced on account of the compulsory attendance law. However, if it is legally possible to keep children out of school until age seven, chronologically, the exceptional cases will eventually receive better education."

## I.

Does a School Board have the legal right to keep pupils from attending school until they are seven?

Article XI, Section 1, Constitution of Missouri, 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."

In the case of Wright v. Board of Education of St. Louis, 246 S. W. 43, the Supreme Court of Missouri, page 44, said the following:

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"In view of the beneficent purpose of public education, it was not attempted in the Constitution (article 11) to place any restriction upon legislative action in regard thereto other than an age limit within which the rights granted were to be enjoyed."

In *Rogers v. McCraw*, 61 Mo. App. 407, the St. Louis Court of Appeals, page 409, said:

"To entitle the plaintiff to maintain the action, she must have been within the school age (as fixed by the constitution) at the time she was prohibited from attending the school. *Roach v. Board of Public Schools*, 77 Mo. 484."

It is our opinion that any pupil between the ages of six and twenty years has a legal right to attend school and the board is not justified in denying attendance to pupils until they attain the age of seven. It is our further opinion that the facts stated in your letter would be no excuse or justification to deny certain children the right to attend school until such attain the age of seven. However, if a child is feeble-minded, deaf, blind or crippled, such would not have to be admitted to the same school of instruction provided for normal children, but when ten or more of such defective children are found in the district a special class of instruction shall be provided for same. Sections 9218, 9219, 9220 and 9434, Revised Statutes of Missouri, 1929.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General

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