

BOARD OF HEALTH: Power of Board of Education to require vaccination
of pupils.

Schools-

10-29

October 29, 1935.



State Board of Health
Jefferson City, Missouri

Attention Doctor E.A. Musson.

Gentlemen:

We acknowledge receipt of your request for an
opinion of this office reading as follows:

"Enclosed please find the copy of a
letter from Mr. Harry B. Hulett,
Secretary of the Webb School District
and the copy of a letter which Mr.
Hulett sent us.

"Will you please give us an opinion
in regard to compulsory vaccination
and medical inspection as requested
by Mr. Hulett. I presume he refers
to vaccination against smallpox."

Enclosed was a letter from Harry B. Hulett, Secretary of the
Webb School District, reading as follows:

"We are inclosing herewith a copy of
letter we have received from the
parents of pupils in one of our grade
schools, and we are asking how far can
we go legally with compulsory vaccination.
We shall be pleased to have your reply
in detail."

The problem presented is the extent of the power of the Board of Education to require vaccination of pupils.

Section 9207 R. S. Missouri 1929, one of the Sections applicable to all classes of schools, provides in part:

"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shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner.* * * *"

The foregoing section has been construed as being sufficient to authorize a board of education to make a rule excluding all pupils who have not been vaccinated. In the case of State ex rel. O'Bannon vs. Cole, 220 Mo. 697, the Supreme Court had before it a mandamus suit wherein it was sought to require admittance of unvaccinated pupils regardless of the School Board's rule requiring vaccination, in view of the existence of a threatened epidemic of smallpox. The Court on this proposition stated, l. c. 706:

"We have no doubt that in the event of a threatened epidemic of smallpox such boards can pass a rule excluding all pupils who have not been vaccinated. That a person who has never been vaccinated is subject to the contagion of smallpox is general knowledge. That vaccination has reduced the ravages of this disease is also general knowledge. That the appearance of unvaccinated pupils in a public school at a time of a smallpox epidemic, would tend to break up and disorganize a public school, is unquestioned. That the school board has the power to absolutely suspend the school during epidemics of contagious or infectious diseases, we think can hardly be questioned. No court would compel the opening of a school under such circumstances. The power here exercised was a very similar power, and if these rules are reasonable, we see no reason why their enforcement should be prohibited."

The facts were that smallpox had been prevalent in the City of Sedalia for some eight years previous to the making of the order and that at the time the order was made there were some twenty-seven cases in the city and by the time the case was tried there were still several cases of this disease reported to the local Health authorities. The Court held that the rule of the school board was reasonable, but stated that they were passing on the facts in the particular case. On the other hand, the Court did not criticize the earlier case of In The Matter of Rebenack, 62 Mo. App. 8, in which case it did not appear that there was an epidemic existing or threatened. The communications received from you do not indicate the facts existing in the Webb School District. However, let it be said that the Board of Education is authorized to make any reasonable rule by virtue of the provisions of Section 9207 supra, and that the reasonableness of the rule is to be first determined by the school board itself. This does not mean that the school board may act arbitrarily or without reason. In view of the Supreme Court decision aforesaid, it cannot be doubted that a rule compelling vaccination when there are cases of smallpox in the district at the time, is reasonable and enforceable.

Insofar as medical examination is concerned Section 9208 specifically authorizes medical examinations for the purpose of determining the existence of contagious or infectious diseases. This section reads in part as follows:

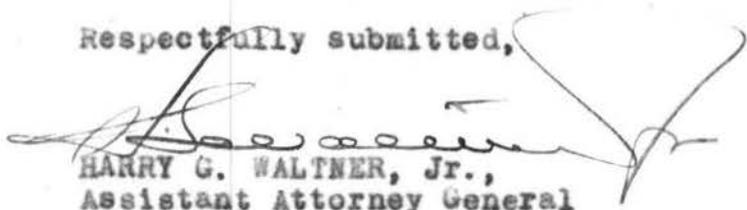
"It shall be unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to the same. For the purpose of determining the diseased condition, or the liability of transmitting 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 disease being transmitted by the same." * * * *

October 29, 1935.

CONCLUSION.

It is therefore the opinion of this office that the Board of Education of the Webb School District is authorized to make reasonable rules and regulations respecting compulsory vaccination and medical inspection and that the reasonableness of such rules and regulations are to be determined by the facts existing at the time the rules are made and that without question a rule providing for a compulsory vaccination without expense to the pupil, when smallpox is prevalent within the district would be reasonable, as would a rule providing for medical inspection for the purpose of determining the existence of contagious or infectious disease or the liability of transmitting the same.

Respectfully submitted,



HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

HGW:MM