

CHILDREN:) Defective child if not given education by parents
SCHOOLS:) until such is 16 years of age, then State Home
CHILDREN'S HOME:) has right to cite said children and parents before
the juvenile court to have said court declare such
child neglected, and after declaring such child
neglected the custody of said child given to
Children's Home.

January 2, 1936.

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Mrs. W. W. Henderson
Executive Director
State Children's Bureau
Carrollton, Missouri

Dear Mrs. Henderson:

This is to acknowledge your letter as follows:

"The State Children's Bureau requests
an opinion on Section 9221, Chapter
57, R. S. 1929:

'The State board of charities and
corrections is hereby authorized
where no special classes have been
provided, or instruction arranged
for as provided in sections 9218,
9219 and 9220 of this article,
and where proper home instructions
is not given as provided in section
9434, to take charge of and provide
for the proper training of feeble-
minded, deaf, blind, and crippled
children under the age of sixteen
years who have not attained the
eighth grade in school. Where, in
order to secure such training, it
is necessary to incur expense for
the transportation, education or
maintenance of such child, and where
the state board of charities and
corrections ascertains upon investiga-
tion, that the parent, guardian or
other person in charge of such child

is unable to bear such expense, the state board of charities and corrections is hereby authorized to incur such expense for such child, and to charge the same to the county in which it resides. It shall be the duty of the county superintendent of public welfare and of the county superintendent of schools, and of the superintendent of schools in the city of St. Louis, to report to the state board of charities and corrections, all children within their counties and the city of St. Louis who come within the provisions of this section.'

"There has been reported to the State Children's Bureau by O. E. Burke, Superintendent of Schools, Franklin County, Union, Missouri, the case of Frances Downey of St. Clair, Missouri, a deaf and dumb child, aged 13 years. She is entered in the rural school but is not able to learn because the teacher is not trained to teach her. The parents have been unwilling that the child should go to Fulton, but the Superintendent of the State institution at Fulton, insists that after these handicapped children are past 12 years, it is much more difficult for them to learn a mute language.

"The custom in the past has been for the State Children's Bureau to have such a child declared neglected where the parents are unwilling to furnish suitable instruction. Is it your opinion that the State Children's Bureau has the right under this statute and its correlated sections to remove this child from the custody of its parents for the period of the school year, returning her to them during the summer months? The child has other handicaps - goitre, etc. At times she can hear a little bit and with proper treatment her hearing

might be restored. These are the reasons for our wish to declare her a neglected child and secure for her the proper training. As other cases have arisen in the past and will probably arise again where handicapped children are denied an education by their parents, we should like an opinion as to our rights to remove the children temporarily from the custody of the parents and place them in the proper school, such as the blind and deaf, the same as we do have the right to remove feebleminded children and place them in the school at Marshall. Of course the whole procedure would come under the juvenile court and he might decide there was no dependency and neglect."

Section 9221, R. S. Mo. 1929, is quoted in full in your letter so we will not again set out the provisions of said section.

There is no ambiguity, as we read it, relative to Section 9221, supra, and it merely imposes upon the Board of Charities and Corrections the duty to take charge of and provide for proper training of feebleminded, deaf, blind and crippled children under the age of sixteen years. The manner and method of taking charge of such children is found in other statutes.

As to the manner and method of obtaining possession of children for the purposes enumerated in Section 9221, supra, we quote from an opinion rendered to you on August 8, 1933 as follows:

"Section 14095 R. S. 1929, creates and establishes an institution so as to provide neglected and dependent children a temporary home pending placement in permanent family homes, proper care and

instructions. Neglected and dependent children, under seventeen years of age, only may be admitted to the State Home. (Secs. 14100 and 14101 R. S. 1929).

"'Neglected' and 'dependent' children are those defined by Section 14101, we quote in part:

"'(a) Dependent upon the public for support, or (b) in a state of habitual vagrancy or mendicity, or is (c) ill-treated, and that his or her life, health or morals are endangered by continued cruel treatment, neglect, immorality, or gross misconduct of its parents, guardians or custodians.'

"Such children (neglected and dependent) are given to the guardianship of the State Home by formal commitment after citation and hearing.

"Section 14101 R. S. 1929, provides in part:

"'All commitments to said home shall be made by the juvenile court of the county of such child's bona fide residence. * * * * *'

"Section 14102 R. S. 1929, provides in part as follows:

"'The judge shall thereupon cite the parents, guardians or custodians of such child, if within the county, to show cause before the court, at a time and place named, why such child should not be committed.'

"Section 14103 R. S. 1929, provides in part:

"'Said judge shall examine into the facts alleged, and if he finds the

allegations of the complaint to be true, etc * * * *, the judge shall enter an order committing the child to the guardianship of said board."

It is our opinion that Section 9221, supra, gives to the State Children's Bureau the right to cause a complaint to be filed before the Juvenile Court in which an alleged neglected child is domiciled and that, after hearing, the court issues a commitment which gives the right of possession and custody of said child to the State Children's Bureau.

It is our further opinion that said Section 9221 does not give the State Children's Bureau the right to take a child from its parents until an order is obtained from the Juvenile Court. In other words, the State Children's Bureau cannot obtain custody of a neglected child without due process of law.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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

JLH:EG