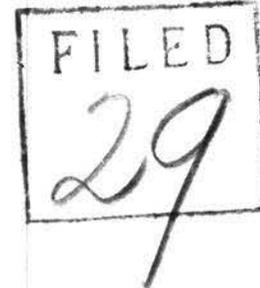


SCHOOLS:

Public schools not within the scope of statutes requiring fire escapes and which provide criminal liability for failure to so provide.

September 18, 1939 9/18



Honorable James P. Finnegan
Prosecuting Attorney
City of St. Louis
St. Louis, Missouri

Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"I would appreciate it very much if you would render me your opinion on Sections 13757 and 13760 of the Revised Statutes of Missouri, 1929, as they affect the public school buildings of the City of St. Louis."

Section 13757, R. S. Mo. 1929, provides as follows:

"It shall be the duty of the owner, proprietor, lessee, trustee, or keeper of every hotel, boarding and lodging house, tenement house, schoolhouse, opera house, theater, music hall, factory, office building, except fire-proof office buildings in which all structural parts are wholly of brick, stone, tile, concrete, reinforced concrete, iron, steel or incombustible material, and which are not used for lodging purposes in the state of Missouri, and every building therein where people congregate or which is used for a business place or for public or private assemblages, which has a height of three or more stories, to provide said structure with iron or

steel stair fire escapes attached to the exterior of said building and by staircases located in the interior of said building. The fire escapes shall extend from the upper story to the ground, pavement or sidewalk with iron or steel ladder from the upper story to the roof; Provided, however, that such fire escapes, if not continued to the ground, pavement or sidewalk, shall be equipped with a counter-balance device attachment, appliance or apparatus which shall extend from the floor level of the second story to the ground, pavement or sidewalk. School buildings, opera houses, theaters and church buildings, also hospitals, blind and lunatic asylums and seminaries, shall each have a stair fire escape built solid to the ground. In no case shall a fire escape run past a window where it is practicable to avoid it. All fire escapes required by this article, except as hereinbefore provided, must be of the kind known as stationary fire escapes. All buildings heretofore erected shall be made to conform to the provisions of this article."

Section 13759, R. S. Mo. 1929, reads as follows:

"The number of fire escapes to be attached to any one building, as required in this article, shall, when the building is located within a city, be determined by the commissioner or superintendent of public buildings within such city, and if there be no such officer in such city, then by the chief of the fire department of such city: Provided, however, that all buildings of non-fireproof construction three or more stories in height, used for manufacturing purposes, hotels, dormitories, school, seminaries, hospitals or asylums, shall have not less than one fire escape for every fifty persons or fraction thereof, for whom working, sleeping or living accommodations are provided above the second

story, and all public halls which provide seating room above the first or ground story, shall have such number of fire escapes as shall not be less than one fire escape for every one hundred persons, calculated on the seating capacity of the hall, unless a different number is authorized in writing by the commissioner, or superintendent of buildings, or the chief of the fire department, or the sheriff of the county, as the case may be."

Section 13760, R. S. Mo. 1929, is as follows:

"All buildings of three and not exceeding four stories in height, hereafter erected or altered, in this state, which are used, or intended to be used for any of the purposes mentioned in article 1, chapter 113, R. S. 1929, shall be provided with exterior stationary stair fire escapes, or at the option of the owner may be provided with interior fireproof fire escapes, and all such buildings, exceeding four stories in height shall be provided with interior fireproof fire escapes. All interior fire escapes shall be installed in fireproof shafts constructed of brick or concrete, and shall extend from the ground to the top of the building, with an exterior entrance thereto at each story and shall have no openings of any kind leading to or from the interior of the building. The doors on the ground floor of every such shaft shall open directly into a street, alley, yard, or outer court or directly into an enclosed fireproof corridor or passageway, constructed of brick or concrete, and leading directly to and opening into a street, alley, yard or outer court. All buildings coming within the provisions of this section, and not exceeding four stories in height, shall be provided with such a number of exterior stationary stair fire escapes as are required by section 13759, R. S. 1929: Provided, that number are so located that no

part of the floor area of any floor above the first story will be more than one hundred feet distant from a fire escape, or if such building be provided with interior fire escapes, there shall be one for every two hundred persons or fractional part thereof for whom working, sleeping or living accommodations are provided for above the second story. There shall be a sufficient number of fire escapes, so located that no part of any floor space above the first story will be more than one hundred feet from a fire escape, whether they are interior or exterior fire escapes."

In considering statutes in regard to the construction of buildings with respect to the health and safety of the public, a rule of strict construction should be followed, which is best expressed in 29 C. J. 260, Section 62, as follows:

"The legislature may * * * * provide for regulations to remedy unhealthful or unsafe conditions of buildings or structures; * * *. These statutes * * * should be strictly construed and should receive the same construction whether involved in a strictly penal proceeding or not."

The question presented in consideration of the above statutes is - Was it the intention of the Legislature that these statutes should apply to public school buildings?

It is well settled in Missouri that school districts are subdivisions of the State and exercise functions of sovereignty. As was said in the case of City of Edina, etc. v. School Dist. et al., 305 Mo. 452, 267 S. W. 112, l. c. 115:

"Under the Constitution of 1875, the public schools have been intrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function and not a special corporate or administrative duty. They are purely public corporations, as has

always been held of counties in this state,
* * * * *

"So that public school grounds occupy the same legal statutes as strictly public property as county courthouses, and are as necessary to the normal functioning of the state government."

We first look to the powers and duties of the Board of Education of the City of St. Louis. The statutes are collected and so clearly stated in the case of Board of Education of the City of St. Louis v. City of St. Louis, 267 Mo. 356, that we will quote at length therefrom. In that case it is said:

"It was in obedience to this constitutional mandate that the Act of 1897 (as amended by the Act of May 28, 1909) under which the public schools of the City of St. Louis have ever since been operated was enacted. It provided that 'every city in this State now having or which may hereafter have five hundred thousand inhabitants or over, together with the territory now within its limits, or which may in the future be included by any change thereof, shall be and constitute a single school district, shall be a body corporate, and the supervision and government of public schools and public school property therein shall be vested in a board of twelve members, to be called and known as the 'Board of Education of . . . ' ' (R. S. 1909, sec. 11030.)

"The powers and duties of this board were highly specialized in the act, and included the general and supervising control, governing and management of the public schools, and public school property in such city; the power to appoint such officers, agents and employees as it may deem necessary and proper; to make, amend and repeal rules and by-laws for the government, regulation

and management of the public schools and school property in such city and exercise generally all powers in the administration of the public school system therein; and have all the powers of other school districts under the laws of the State except as herein provided. Particularising further, it provides for the appointment by the Board of Education of a commissioner of school buildings who 'shall be charged with the care of the public school buildings of such city, and with the responsibility for the ventilation, warming, sanitary condition and proper repair thereof,' and 'shall prepare, or cause to be prepared, all specifications and drawings required, and shall superintend all the construction and repair of all such buildings.' (R. S. 1909, sec. 11036.) In the performance of these duties he was required to appoint such assistants as should be authorized by the Board of Education, one of whom 'shall be a trained and educated engineer, qualified to design and construct the heating, lighting, ventilating and sanitary machinery and apparatus connected with the public school buildings.' (R. S. 1909, sec. 11037.)"

The question presented in the St. Louis Board of Education Case, supra, was whether the City of St. Louis could direct a school district as to the manner in which its sanitary appliances should be maintained. The court held that the statute gave "the board of education plenary power with reference to the construction, maintenance and care of the public school buildings of the city." ("Plenary" is defined by Webster as "full, entire, complete, absolute and unqualified.") The court further said:

"We think it is peculiarly appropriate that those charged with the custody and control of the pupils while in the building should also be charged with the protection of their health while engaged in their studies. The Legislature seems to have taken this view of the matter, and has, in our opinion, in unmistakable terms, placed that responsibility upon the board."

For like reasons the Board of Education would have control over the safety of the pupils since health and safety are synonymous, and the object of both goes to the well-being of the pupils.

Therefore, it will be seen that the Legislature has vested in the board of education absolute control and discretion in the maintenance of public school buildings and has given them absolute supervision over the health and safety of the pupils. We do not believe that this absolute grant of power is to be qualified by a doubtful construction of another statute.

Section 13758, R. S. Mo. 1929, provides that the construction and inspection of the fire escapes are to be under the supervision of and subject to the approval of the commissioner or superintendent of public buildings within such city. To hold that the sections providing for fire escapes apply to public schools, would take a part of the control of such school buildings away from the board of education to whom it has been given absolutely, and place it under a municipal officer.

We would then have the anomalous situation of the health and safety of the pupils, which, of their very nature, are interrelated and closely connected, being under the supervision and control of different officers when it is apparent that it is necessary for one body to have complete authority in the carrying out of such functions. The Commissioner or Superintendent of Public Buildings in the City of St. Louis is a municipal officer and to give him supervisory powers with respect to the public schools, which are a branch of the executive power, would be clearly opposed to the established rule in this state. Board of Education v. City of St. Louis, supra.

The general rule in regard to the application of general legislation to state and political subdivisions is best expressed in 59 C. J. 1103, and is as follows:

"The state and its agencies are not to be considered as within the purview of a statute, however general and

comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies with especial force to statutes by which prerogatives, rights, titles, or interests of the state would be divested or diminished; or liabilities imposed upon it; but the state may have the benefit of general laws, and the general rule has been declared not to apply to statutes made for the public good, the advancement of religion and justice, and the prevention of injury and wrong."

Also in *Morris v. State*, 88 Okla. 189, we find the following:

"The presumption obtains that it is the legislative intent to exclude the state from the operation of a statute for the reason that the laws are ordinarily made for the government of citizens and not the state."

This position is also sustained by *Inhabitants of Whiting v. Inhabitants of Lubec*, 121 Maine 121; *State Highway Department v. Mitchell's Heirs*, 216 S. W. 336.

It will be noted that in Sections 13757 and 13759, supra, that only "school houses," "school buildings," and "school" are included within the requirement of the statute. Applying the above rule that legislation does not include state subdivisions unless specifically made so, the Legislature did not expressly include therein public schools or public school buildings. When constitutional provisions and statutes have been intended to apply to public school or public school buildings, they have expressly so stated. Sections 1, 2, 3, 4, 6, 7, 8 and 9 of Article XI, of the Constitution of Missouri, specifically designate "public schools."

Sections 13757 and 13760, as stated in your letter of request, are found in Article 1, Chapter 113, R. S. Mo. 1929, which chapter deals with public safety. Section 13769,

which is found in Article 2 of Chapter 113, provides for the hanging of doors in certain buildings. It states,

"All the doors for ingress and egress to and from all public schoolhouses and all other public buildings, and also of all theaters, assembly rooms, halls, churches, factories with more than twenty employes, and of all other buildings or places of public resort whatever, where people are wont to assemble, * * *"

shall be so hung so as to open outwardly. The Legislature in this section specifically includes public school houses in its provisions as to doors but in the prior section as to fire escapes it only says "schoolhouses."

Therefore, since a political subdivision is not to be included within the scope of a statute by inference but must be specifically brought within the purview, and since the Legislature in the very same chapter has in a different statute expressly included "public schoolhouses," we believe that "school" and "school building" in Sections 13757 and 13760 do not include public schools or public school buildings. We are further strengthened in this contention by a reference to Section 9208, R. S. Mo. 1929, which deals with contagious diseases among pupils and which is a measure for the protection of children attending schools. It provides 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, * * * * *"

It will be noted that courthouses, which are the most public of all buildings, and where large numbers of citizens frequently congregate, where courts of justice are held and where valuable records are kept, are conspicuously absent from the statute, which confirms our belief that only privately owned public buildings were intended to be regulated.

Furthermore, the wording and scope of the statute providing a penalty for failure to comply with the fire escape

statute indicates that public school buildings were not included within its provisions. Section 13761, R. S. Mo. 1929, provides as follows:

"The owner, proprietor, lessee or manager of a building which, under the terms of this article, is required to have one or more fire escapes, who shall neglect or refuse for the period of sixty days after this article takes effect to comply with its provisions, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than two hundred dollars, or by imprisonment in the county or city jail not more than three months, or by both fine and imprisonment, and each day shall be deemed a separate offense."

It will be noted that this section uses the words "owner, proprietor, lessee or manager" and does not include the Board of Education or the Commissioner of School Buildings which were established long prior to the enactment of Section 13761. Such failure is apparent proof that the Legislature did not intend the section to apply to the school buildings in the City of St. Louis.

This is strengthened by a reference to Section 13770, which provides the penalty for failure to hang doors on public school houses in the manner set out above. This penalty section is more specific and uses the words "architect, superintendent or other person or persons or body corporate, who may have charge of the erection, or may have the control or custody of any of the said buildings" thereby manifesting a clear intent to include school districts, which are bodies corporate.

It is a well established principle of law that school officers are presumed to do their duty. School officers, intent on the public good, having the entire resources of the school district at their disposal, would use all means within their power to construct the buildings which are to house children

of the district as safely as they know how. The reason for compelling a private individual to add these safety devices does not exist in the case of a school district. A private individual is intent primarily with the pecuniary gain or saving which enures from his possession of a building. A private school carried on for profit might neglect to provide adequate safety facilities for its pupils due to the expense of construction.

At this point several final questions present themselves. Assuming that the statutes did apply to public schools, how could the Board of Education avail itself of additional funds to construct fire escapes, if no surplus was on hand, except by vote of the entire district? Furthermore, if five of the twelve members voted to install fire escapes but were overruled by the majority vote of seven, they, too, would be guilty of a crime. Also, since the statute makes each day in which there is a failure to comply, a separate offense, a person elected to the Board of Education, upon learning of the violation of the law his first day in office, could resign, but would still be criminally liable. We do not believe that the Legislature intended such injustices should be perpetrated under the guise of promoting public safety.

Conclusion

It is, therefore, the opinion of this Department that Sections 13757 and 13760, R. S. Mo. 1929, do not apply to the public schools of the City of St. Louis.

Respectfully submitted,

ARTHUR O'KEEFE
Assistant Attorney-General

ROBERT L. HYDER
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

AO'K/RLH/EG