

MISSOURI SCHOOL
FOR THE BLIND:

Missouri School for the Blind
is a part of the free public
school system.

August 6, 1942

FILED 16

Dr. C.C. Chesterson
President, Board of Managers
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri

Dear Mr. Chesterson:

Under date of June 5, 1942, you wrote
this office requesting an opinion as follows:

"The Board of Managers of the Missouri
School for the Blind respectfully requests
an opinion upon the following:

The full appropriation of the Missouri
School for the Blind is from the School
Moneys Fund. In the past, all appropri-
ations had been from General Revenue.

1. Under which fund should the
school operate?
2. If we can legally be under
School Moneys Fund, can parts
of the appropriation be used
for operation, additions, and
repairs and replacements?
3. If this school legally belongs
under School Moneys Fund, does
Chapter 72, Article 2, R.S. of
Missouri, also govern the Mis-
souri School for the Blind?"

The Missouri School for the Blind exists

and functions in accordance with the provisions of Article 25, Chapter 72, R. S. Mo., 1939. This Article at the 1939 Statutes was enacted by the Fifty-first (51st) General Assembly in 1921, it was House Bill 521. The title of the Act and the first section are herein set out:

"SCHOOLS: Classifying Missouri School for the Blind at St. Louis and the Missouri School for the Deaf at Fulton as Educational Institutions of the State."

"Section 1. Classed and conducted -- how--The 'Missouri school for the blind' at Saint Louis, and the 'Missouri school for the deaf' at Fulton shall be regarded, classed and conducted wholly as educational institutions of the state."

The school for the blind was originally classed as an eleemosynary institution and was under the same control as the eleemosynary institutions. In 1915 the control of the school was taken from the Managers of the eleemosynary institutions and placed in a separate board by the Legislature. In 1921, the old law relating to the school was repealed by House Bill 517, Laws of 1921, page 643. This repeal was followed by the enactment of House Bill 521, quoted from herein.

Article 1, Chapter 72, R. S. Mo., 1939, classifies the public schools of the State and is as follows:

"The public schools of this state are hereby classified as follows: First, all districts having only three directors shall be known as common school districts; second, all districts outside of incorporated cities, towns and villages, which are governed by six directors, shall be known as consolidated school districts;

third, all districts governed by six directors and in which is located any city of the fourth class, or any incorporated town or village, shall be known as town school districts, and fourth, all districts in which is located any city of the first, second or third class shall be known as city school districts."

This Section was enacted long prior to the present law governing the Missouri School for the Blind. It was Article 1, Chapter 57, R. S. Mo., 1919.

From this classification it is apparent that when the law was enacted the school for the blind was not considered as a portion of the free public school system by the Legislature. At this point it is desired to call to your attention Section 1, Article XI of the Constitution of the States:

"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."

This section is a command to the General Assembly to establish and maintain free public schools for all persons between the ages mentioned, it does not except the blind persons, the deaf persons or any other class of persons; it is all embracing.

Inasmuch as blind persons would require different methods of instruction and teachers especially trained, it follows that separate schools would necessarily be provided in order that the instruction be furnished to the blind persons.

The State of Missouri maintains the School for the Blind; it is free to the residents of the State and provision is even made for furnishing travelling expense and clothing for persons who are

entitled to instruction but who are unable to pay their own expenses. Section 10856, R.S.Mo., 1939. Further, the General Assembly has made no other provision for the education of blind persons.

This would indicate it was the intention of the General Assembly to make the Missouri School for the Blind a free public school. No Missouri case has been found defining the words "free public schools" as used in Section 1, Article XI of the Constitution. But in the South Carolina case of In re Malone's Estate, 21 S. C. 235, the words "free public school" as used in the South Carolina Constitution are defined as follows:

" * * * * * providing that the proceeds of all escheated property shall be faithfully appropriated for the purpose of establishing and maintaining free public schools, and for no other purpose or use whatever, means schools supported by the public for the use of the public generally, * * * * * "

And in the Maryland case of State v. Maryland Institute for Promotion of Mechanic Arts, 41 A. 126, 87 Md. 643, system of public schools is defined as follows:

"The constitutional provision requiring the General Assembly to establish and maintain a thorough and efficient system of free public schools means that the schools must be open to all without expense. The right is given to the whole body of the people."

Section 6, Article XI of the Constitution provides for the Public School Fund of the State and contains the following clause:

" * * * * * shall be faithfully appro-

riated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

The Missouri School for the Blind being a free public school it would follow that an appropriation for the school made from the public school fund would be authorized.

It might be urged the school for the blind is not included in the classification of the Public Schools found in Article 1, Chapter 72, and is therefore not a fact of the system of free public schools and not entitled to an appropriation from the public school fund. In this connection it is pointed out that Article 1, Chapter 72, is an earlier enacted general law, while article 25, Chapter 72, is a later enacted special law. It is believed that the later enacted special law relating to blind school and particularly Section 1 of the Act, now Section 10845 amends by implication Article 1, Chapter 72, R. S. Mo., 1939; And that the whole of the Act relating to the Missouri School for the Blind amends by implication the statutes relating to the distribution and apportionment of the public school funds to authorize an appropriation from such funds for the Missouri School for the Blind. Amendments by implication, while not being favored, are recognized. 59 C. J. paragraph 434, page 851. In the early case of State ex rel Maguire v. Draper, 47 Mo. 29, the possibility of amending by implication is recognized by the following language at local citation 32:

" * * * * * The constitution has gone so far as to prohibit amendments in terms, except in a particular way, but it has not prohibited amendments by implication. It has not said that when an act is passed inconsistent with a preceding one, so that both can not stand, the latter one shall be void and the earlier one shall prevail, but has left the law as it always has been, viz: that when two statutes are

inconsistent and repugnant, the one last enacted shall be considered in force. This must be so in the nature of things, for the last enactment is the latest expression of the Legislative will, and must prevail, unless it contains some inherent vice that prevents it becoming a statute."

And in the later case of *Dorris Motor Car Co. v. Colburn*, 270 S. W. 339, we find the following brief statement at local citation 344:

"If it be conceded that the act contains provisions which modify, amend, or repeal in part the general statute relating to appeals and the statute relating to the consolidation of corporations, still the fact that the title contains nothing to indicate such amendments or repeals does not render the act obnoxious to section 28 of article 4 of the Constitution; for neither that section, nor section 34 of said article, relating to amendments, has any application to amendments and repeals by implication. *State v. Miller*, 100 Mo. 439, 13 S. W. 677; *State v. Draper*, 47 Mo. 29; *Geisen v. Heiderich*, 104 Ill. 537; *Anderson v. Commonwealth*, 18 Grat. (Va.) 295; *Poe v. State*, 85 Tenn. 495, 3 S. W. 658."

On this particular point the later case of *Schott v. Auto Ins. Co.*, 31 S. W. (2d) page 7, l.c. 11, follows and cites with approval the *Dorris Case*, supra.

From the foregoing it is the opinion of the writer that the Missouri School for the Blind is a part of the system of free public schools and an appropriation for it out of the public school fund is authorized.

Section 1, Article XI, of the Constitution, supra, directs the establishing and maintaining of free public schools. Section 6 of the same Article creates the public school fund, which Section is as follows:

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriations); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

And Section 7 of the same Article directs the General Assembly to set apart not less than twenty-five percent (25%) of the revenue of the State, exclusive of the interest and sinking fund, to be applied annually to the support of the schools.

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If the foregoing is correct it naturally follows that such funds as would be appropriated could be used for "operation", "additions", "repairs" and "replacements".

As previously pointed out, the law establishing the school for the blind is a special law and the provisions of Article 2, Chapter 72 would not take precedence over any of the provisions of Article 25, Chapter 72, the Law establishing the school for the blind. Where no provision is made in Article 25, the provisions of Article 2 would govern so far as applicable although there are very few provisions in Article 2, which would be applicable and not in conflict with the provisions of Article 25.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General