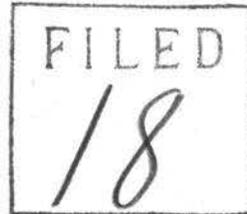


SCHOOLS: How cost of transporting Negro student to school is to be paid when it exceeds five dollars per month.

November 2, 1943.

Mr. Stephen Cornish,
Superintendent of Schools,
Pike County,
Bowling Green, Missouri.



Dear Sir:

This will acknowledge receipt of your letter of September 22, 1943, as follows:

"The problem of educating a widely scattered Negro population is probably the most difficult one connected with my office. I should greatly appreciate it if you would clarify the law for me in certain particulars.

"What should be done about Negro children in districts so far from a school that \$5.00 per month is inadequate for transportation? Does your opinion of September 30, 1936, still hold?

"Our laws require us to give equal educational advantages to Negroes, and yet \$5.00 per month is sometimes a small fraction of what is necessary in transporting a single Negro child to school. What can we do in these cases?

"Has a school board met its legal obligations when it furnishes transportation to a Negro school, free tuition, but requires the pupil to walk three miles to the point where the transportation begins?"

Section 1, Article XI of the Constitution provides:

"The general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall estab-

lish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years."

Section 3, Article XI of the Constitution provides:

"Separate free public schools shall be established for the education of children of African descent."

These two sections make it mandatory that the state do two things. First, it must give free instruction to all children between the ages of six and twenty, and, second, where such children are negroes, the instruction must be given at separate schools.

From your request we assume that in the district in question there are less than eight negroes of school age. Where that is the case, Section 10350 R. S. No. 1939, after first providing that in the case of more than eight negro students a separate school may be established, or in lieu thereof they may be sent to the negro school in a district in the county wherein a school is maintained for them with tuition and transportation paid, then provides:

"* * * if the number of colored children enumerated is less than eight, they shall have the privilege and are entitled to attend school in the nearest district in the county wherein a school is maintained for colored children and the transportation and tuition charges incurred shall be paid; said transportation shall not exceed five dollars per month and tuition charges shall not exceed the pro rata cost of instruction.**"

It thus appears that while the constitution requires free instruction to these students, the legislative procedure set up for carrying out the constitutional mandate is somewhat restricted due to the limitation on the amount which the school district may contribute toward the transportation cost. However, we do not think this failure to provide sufficient funds

for payment of the total cost of transportation creates a violation of the constitutional provisions above cited.

Section 10350 has been the law for a good many years, but it was not until 1929 (Laws 1929, p.382) that there was introduced in the law a provision for transportation. Prior to the 1929 amendment the other provisions now incorporated into Section 10350 were contained in Sections 11145 and 11146 R. S. Mo. 1919. The statutes then provided where there were less than fifteen negro students in a district, they were to go to any district in the county wherein a school was maintained for them, and the sending district was to pay their tuition.

In other words the statutes then, as now, provide for the free education of negro students between the ages of six and twenty. That is what the constitution requires. It does not require that students be transported to and from school at public expense. Such requirements are solely of legislative origin, and that body has placed a limit on the amount to be expended for that purpose.

Where the sum of five dollars per month for each student is not sufficient, then, when the district pays that amount, it has discharged its legal obligation. From there on, under Section 10587 R. S. Mo. 1939, making education for children between seven and fourteen years of age compulsory, it becomes the parents' duty to see that the child gets to school. The inadequacy of the means for getting to school gives rise to no right of the student to demand transportation beyond what the law authorizes, since no one has the right to have the school he must attend located at any particular place. As was said in *Lehew v. Brummell*, 103 Mo. 546, 552:

"The distance which these children must go to reach a colored school is a matter of inconvenience to them, but it is an inconvenience which must arise in any school system. The law does not undertake to establish a school within a given distance of anyone, white or black. The inequality in distances to be traveled by the children of different families is but an incident to any classification, and furnishes no substantial ground of complaint."

Just what arrangements the school district and the parents of these children may make to cover the cost of transportation above five dollars per student is something left to their own judgment.

As to our opinion of September 30, 1936, to Mr. Davis Benning, we still adhere to the view there expressed, that unless the school district does comply with Section 10350 up to the full extent required and permitted by said law, then "such school district shall be deprived of any part of the public school funds so long as the provisions of this section (Sec. 13350) are not complied with."

As to the point where transportation to school may begin, we wish to say that examination of the statutes fails to disclose a single provision which undertakes to say how far a student may be required to go from his home to the point where he may catch the school bus. That being so, then it appears such is a matter for the school authorities to determine in the exercise of their judgment in laying out the route of the school bus.

C O N C L U S I O N

It, therefore, is our opinion that where there are less than eight negro children in a school district, it is the duty of the district to send them to school in some district in the county where a school is maintained for negro children, and that said district must pay their tuition and provide at least the sum of five dollars per month per child for transporting said children to school; that where five dollars a month will not defray the cost of transporting the children to their school, then the parents of such children must assume the additional cost under such conditions as they may agree upon with the district; that failure of the district to pay the five dollars on transportation cost deprives said district of the right to any part of the public school fund; and, that in establishing a transportation route, there is no legal requirement as to how far a student may be required to go in order to reach the point to catch a school bus.

Respectfully submitted,

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APPROVED:

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