

SCHOOLS: School board cannot extend the number of hours of  
a school day beyond six.

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February 20, 1943

Honorable Roy Scantlin  
State Superintendent of Schools  
Jefferson City, Missouri



Dear Mr. Scantlin:

We have your letter of recent date in which you  
submit for an opinion the following question:

"Would the rules and regulations of the board  
of education, in extending the hours of school  
work within the day and counting the overtime  
as part of another day in order to shorten the  
total number of calendar days that school  
would actually be in session, be proper and in  
conformity with the laws of this state?"

It has uniformly been held by the courts of  
this country that the administration of public schools is  
primarily a function of the State. In 56 C. J. 279, Sec-  
tion 129, it is said:

"The management and administration of the  
public schools and of the school system, like  
their establishment and maintenance, is pri-  
marily an affair of the state, and the legis-  
lature has full authority, subject to consti-  
tutional restrictions, to enact such laws as  
it may deem necessary and expedient for the  
proper administration and regulation of the  
public schools and the promotion of their ef-  
ficiency. All existing statutes relating to  
the management and administration of the

schools should be construed together. \* \* \* \* "

The same policy has been followed in Missouri from the beginning of statehood. It is embodied in the Constitution of Missouri in Section 1, Article XI, which reads as follows:

"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."

It will be seen from the foregoing authorities that the management of the school system of this State is primarily the responsibility of the General Assembly. In line with this responsibility the General Assembly has passed many statutes regulating the school system of the state. One of those statutes is Section 10362 R. S. Mo., 1939, which reads as follows:

"The school day shall consist of six hours occupied in actual school work; the school week shall consist of five school days, except when Thanksgiving day, December 25, February 22 or July 4 shall fall upon a regular school day, then the four remaining school days, if taught, shall constitute a legal school week; the school month shall consist of four weeks, and the school year shall commence on the first day of July and end on the thirtieth day of June following."

By the foregoing section it would seem clear

that the General Assembly has definitely regulated the length of a school day. It has declared specifically that a school day shall consist of six hours occupied in actual school work. The General Assembly was within its rights in providing the length of a school day since such regulation would be a part of the administration and management of the public school system. No doubt the General Assembly took into account many factors in arriving at the proper number of hours which could be occupied with actual school work. They no doubt took into account the health of the students, the effectiveness of teaching for a longer period of time, the necessity of students getting to and from school during daylight and other factors which would naturally enter into a determination of how many hours should be spent in school in any one day. The language of Section 10362 is very definite and is mandatory.

We assume from your letter, however, that some contention is made that under the provisions of Section 10340 of the statutes the board of directors have authority to regulate the length of a school day. Said section reads in part as follows:

"The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district —  
\* \* \* \* \*

It is true that the General Assembly, subject to the Constitution, may delegate the management and administration of schools to local agencies such as school districts, municipal corporations, etc. The rule has been stated in 56 C. J. 280, Section 130, in the following language:

"Subject always to the provisions of the state con-

stitution, the legislature may delegate the management and administration of the public schools of the state to such subordinate agents or agencies as it may select or create, such as municipal corporations or boards of education or school directors or trustees, conferring upon them such powers and imposing such duties as it may see fit, and may at any time abolish an office or agency, and select or create new agencies to administer the school system. \* \* "

Our question, therefore, is to determine whether the General Assembly of Missouri has, by Section 10340, supra, delegated to the board of directors of a school district the power to prescribe the length of a school day. In other words, is prescribing the length of a school day one of the "needful rules and regulations for the organization, grading and government in their school district"?

In this connection it should be observed that if there is any doubt as to whether the Legislature has delegated power to a local board, the doubt shall be resolved against the existence of such power. In the case of *Wright v. Board of Education*, 295 Mo. 466, 246 S. W. 43, the Supreme Court was considering the power of a board of education to make certain rules and regulations under what is now Section 10340. In discussing that question the Court said (246 S. W., l.c. 45):

"The power of the board to make the rule in this case is to be considered prior to a determination of its reasonableness. The power delegated by the Legislature is purely derivative. Under a well-recognized canon of construction, such powers, however remedial in their purpose, can only be exercised as are clearly comprehended within the words

of the statute or that may be derived therefrom by necessary implication; regard always being had for the object to be attained. Any doubt or ambiguity arising out of the terms of the grant must be resolved in favor of the people. \* \* \* \* \*

In view of the fact that the Legislature has by Section 10362 set the length of the school day by positive law, we think that, to say the least, there is serious doubt as to whether the Legislature intended by Section 10340 to delegate that power to the board of directors.

We think it is clear that where the General Assembly has exercised its power to set the length of the school day, there is really nothing in that regard to delegate to the school boards. The Legislature has already controlled that part of the management of the schools and therefore subordinate agencies cannot act in that field. If there is a doubt as to whether the school boards have the power to set the length of day, that doubt would have to be resolved against the board having such power.

Furthermore, to contend that the power to prescribe the length of the school day is granted to school boards by Section 10340 it would be necessary to hold that such power is embraced in the grant of the general power to make rules and regulations for the organization, grading and government of schools. Section 10340 is a general statute giving to the school boards rather broad and indefinite powers. Section 10362 is a special statute dealing specifically with particular rules and regulations (assuming that the prescribing of the length of the school day is a rule and regulation). In that situation we are faced with the rule of statutory construction that where there is a general statute and a special statute dealing with the same subject matter, the special statute controls

over the general statute. This well established rule was recently restated in the case of State ex rel. McKittrick v. Carolene Products Co., 346 Mo. 1049, 144 S. W. (2d) 153, 156, in the following language:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' Quoted with approval in the case of State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 247 S. W. 129, loc. cit. 132."

So it will be seen that even if Sections 10340 and 10342 deal with the same subject matter, to wit, the length of the school day, Section 10362 must prevail since it is a special statute.

The foregoing rule of construction requires that all statutes dealing with the same subject matter should be harmonized if possible so that all may be given effect. The rule has been stated in a somewhat different language in the case of Coates and Hopkins Realty Co. v. Kansas City Terminal Ry. Co., 328 Mo. 1118, 43 S. W. (2d) 817, 822, wherein the Court said:

" \* \* \* \* \* 'All provisions of law on one topic should be considered in determining the meaning of any particular portion thereof \* \* \* and such a construction should be given to the latter as will keep all the provisions of law on the same subject in harmony, and give effect to all when possible.' \* \* \* \* \*"

We believe that Section 10340 and Section 10362 can be harmonized so that both may be given effect and meaning. Section 10362 prescribes the length of school day, while Section 10340 leaves to the school boards the power to make rules and regulations as to conducting the school during the school day. Said sections do not conflict if such interpretation is given to them. One of them (Section 10362) declares the will of the General Assembly as to how many hours schools shall be conducted during the day, and the other (Section 10340) leaves the details of what particular part of the day shall be used to make up the six hours required by Section 10362. Under such construction the school boards would still have the power to make rules and regulations for the organization, grading and government of their own schools. By such construction of these two statutes meaning and effect is given to both, but to construe Section 10340 as vesting in the school boards the power to prescribe the length of the school day would be to ignore and render ineffective Section 10362.

#### CONCLUSION

It is, therefore, the opinion of this office that a rule and regulation of a school board undertaking to extend the hours of school work within the day beyond six hours for the purpose of counting the overtime as

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part of another day and thereby to shorten the total number of calendar days that school would actually be in session would not be in conformity with the laws of this State.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK  
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