

*copy to Mr. Johnson*

SCHOOLS: In prosecuting an action for violation of the Compulsory Attendance School Law, an information must be filed.

FILED

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March 13, 1948

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Honorable Gordon Massey  
Prosecuting Attorney  
Christian County  
Ozark, Missouri

Dear Sir:

This is in reply to your request for an opinion, reading as follows:

"Please advise me if it is necessary for the prosecuting attorney to file an information against the parents who are guilty of violating the Compulsory Attendance School Law, Section 10587 and following, R.S. Mo. 1939. I think not.

"Also advise whose duty it is to prosecute this action. It would appear that it is the attendance officer's duty to do this."

In Section 10591, R.S. Mo. 1939, it is provided that the parents or guardians of children who violate any provisions of Sections 10587 to 10594, R.S. Mo. 1939, shall be deemed guilty of a misdemeanor. If complaint is made by the school attendance officer and prosecution is desired, it is our opinion that it would be necessary to file an information. Article 1, Section 17 of the Constitution of 1945, provides:

"That no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information, which shall be concurrent remedies, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual

service in time of war or public danger,  
nor to prevent arrests and preliminary  
examination in any criminal case."

Senate Bill No. 193 of the 63rd General Assembly, Laws  
of Missouri, 1945, page 751, Section 2, provides:

"Prosecutions before magistrates for  
misdemeanors shall be by information,  
\* \* \*"

In answer to your second question, we believe that if the  
particular district has a school attendance officer it would  
be his duty to act as the prosecuting witness in the action.  
Section 10591 provides that after investigation of the absence  
of a child from school and after warning the parent or guard-  
ian having custody of the child, "said school attendance  
officer shall make complaint against said parent, guardian or  
other person in charge of such child before the judge of the  
juvenile division of the circuit court or before a justice of  
the peace in the county where the party resides for refusal  
or neglect to send such child or children to school; \* \* \*"  
However, we believe that it would be the duty of the prose-  
cuting attorney, under Section 12942, R.S. Mo. 1939, to file  
the information if he deemed it advisable to prosecute the  
action further.

You will note that Section 10595, R.S. Mo. 1939, provides  
that the circuit court shall have concurrent jurisdiction with  
the court having general jurisdiction over misdemeanors to try  
and determine any cases of violation of the provisions of  
Sections 10587 to 10594.

#### Conclusion.

It is the opinion of this department that an information  
must be filed against parents violating the Compulsory Attend-  
ance Law if action is to be instigated. The school attendance  
officer is the proper person to act as the prosecuting witness,  
and the prosecuting attorney is the proper person to file the  
information if in his judgment the action is warranted.

Respectfully submitted,

APPROVED:

JOHN R. BATY  
Assistant Attorney General

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JRB:ml