

APPROPRIATIONS:
TRAINING SCHOOLS:

Appropriations for Training Schools at Boonville, Chillicothe and Tipton for payment of teachers' salaries, educational supplies, etc., should not be made out of that part of the general revenue set apart for the free public schools.

*Copy to
J. W. Smith
Con Law*

January 9, 1948

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Mr. Louis J. Sharp, Director
Board of Training Schools
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading, in part, as follows:

"In its request for appropriations for the operations of the training schools at Boonville, Chillicothe, and Tipton, for the fiscal year beginning July 1, 1948, the Board of Training Schools plans to ask that the portion of the appropriations made to these institutions for the payment of teachers' salaries, for educational supplies and books, and for the general operation expenses of the formal educational program, exclusive of maintenance and construction of buildings, be charged to that part of the general revenue set apart for the support of free public schools.

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The answer to the request contained in your letter makes necessary a determination of whether or not the phrase "free public schools," found in Sections 1(a) and 3(b) of Article IX of the Constitution of Missouri, includes the "educational institutions" contained in Section 38 of Article IV of the Constitution.

It is to be noted that Section 1(a) of Article IX of the present Constitution of Missouri differs from Section 1 of Article XI of the Constitution of 1875 only in requiring that the General Assembly shall establish and maintain free public schools for all persons in this state within ages not in excess

of twenty-one years, as prescribed by law, while Section 1 of Article XI of the Constitution of 1875 provided for the instruction of all persons in the state between the ages of six and twenty years; and that Section 3(b) of Article IX of the present Constitution differs from Section 7 of Article XI of the Constitution of 1875 only in the fact that the Constitution of 1875 provided for four months of schooling and the present Constitution provides for eight months.

Therefore, any interpretations placed upon the phrase "free public schools" by the courts of this state when construing the Constitution of 1875 would be considered as being adopted by the Constitution of 1945 when the same words are used. In the case of *Roach v. Board*, 77 Mo. 484, the Supreme Court of Missouri said, l. c. 488:

"The provisions of the 1st and 6th sections of article 11 of the constitution of the State, taken together, are conclusive on this point. The 1st section in effect declares that all persons in the State between the ages of six and twenty shall be gratuitously instructed in the free public schools therein provided for, and the 6th section in like manner declares that the 'public school fund,' therein mentioned, shall be faithfully appropriated for establishing and maintaining the 'free public schools' provided for in said article, and for no other uses or purposes whatsoever. The two sections, taken together, amount to both a requirement and a prohibition. By the first, free public schools for the gratuitous instruction of all persons in the State between the ages of six and twenty are required, but by the sixth, the funds thus dedicated to that use are prohibited from being expended for any other uses or purposes whatsoever. * * * *"

(Emphasis ours.)

Since the Supreme Court of Missouri has held that "free public schools" are those for the gratuitous instruction of all persons in the state within the required age limits, unless the training schools are open to all persons who wish to receive an education therein, they cannot be deemed to be "free public schools," and therefore the free public school fund would not be available for such institutions.

Mr. Louis J. Sharp, Director -3-

Section 8898, R. S. Mo. 1939, provides for the commitment of boys to the Missouri Training School for Boys by a court having criminal jurisdiction.

Section 9011, R. S. Mo. 1939, provides for the commitment of girls to the Industrial Home for Girls by a court or magistrate.

Section 9025, R. S. Mo. 1939, provides for the commitment of negro girls to the Industrial Home for Negro Girls by the juvenile division of the circuit court.

Since the provisions for commitment to the three training schools in Missouri can be made only by court order, it is clear that the mere fact that Section 38 of Article IV of the Constitution of Missouri denominates such institutions as "educational institutions" does not make of such institutions "free public schools," because the training that is given at such institutions is not for all children generally, but only for such children as are committed to the institutions.

Further, the fact that the Constitution of Missouri, in Article IX, the article on education, uses the same language with regard to "free public schools" as the Constitution of 1875, after such phrase had been construed by the Supreme Court of this state, is conclusive of the fact that only such institutions as were considered to be "free public schools" under the Constitution of 1875 are now "free public schools."

CONCLUSION

It is the opinion of this department that the appropriations for the payment of teachers' salaries, educational supplies and books, and for the general operation expenses of the formal educational program of the Training Schools at Boonville, Chillicothe and Tipton should not be charged to that part of the general revenue set apart for the support of "free public schools."

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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