

SCHOOLS: Division of Health authorized to provide educational instruction for children patients
HEALTH: in tuberculosis hospital at Mt. Vernon; school district to provide special classes for crippled children if ten or more are found in district.

April 12, 1950

Honorable George A. Spencer
Missouri House of Representatives
State Capitol Building
Jefferson City, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"It has been called to my attention that the children kept at Mt. Vernon, the crippled children at the hospital here in Columbia and the children in the Blosser Home in Marshall have no public education provided for them.

"I have checked Senate Committee Substitute for House Bill No. 126, and I am wondering if that bill would permit public funds to be used for this purpose. Have you written an opinion on this matter?

"I would also like to know who should pay for this education if the above House Bill does not cover this matter. It is my understanding that all children of school age should be provided public education and it appears that there are three groups here that are not receiving it, and I would like to know why they are not receiving it from a legal standpoint, and in your opinion why they are not receiving it.

"It appears that this would be a problem that should come under the Department of Special Education, which should provide public education for these three groups of children."

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The State of Missouri in its organic law has long recognized the importance of providing free public education for children. Section 1, Article IX of the Constitution of 1945, provides:

"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 within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children, except in cases otherwise provided for by law."

The above section is substantially the same as Section 1, Article XI of the Constitution of 1875.

The mandate of the above-quoted section of our Constitution lodges the responsibility with the General Assembly to establish and maintain free public schools for the instruction of all persons in the state up to twenty-one years, as prescribed by law. We believe that the Legislature has complied with the Constitution by establishing free public schools for the gratuitous instruction of the children within the state, which may be attended by defective children as well as normal children, if they are able to so attend.

The type of incapacitated children referred to in your letter are those afflicted with tuberculosis who are hospitalized at the sanatorium at Mt. Vernon and the crippled children in the hospital at Columbia and in the Blosser Home at Marshall.

Regarding the children at Mt. Vernon, the Legislature has endeavored to provide for their education by the recent enactment of House Bill No. 201, enacted by the 65th General Assembly and approved August 3, 1949, and now incorporated as Sections 10405.2 and 10405.3, Mo. R.S.A.

Section 10405.2 provides:

"The Division of Health of the Department of Public Health and Welfare is hereby authorized to provide for the teaching and training of children who are resident patients confined in the State Trachoma Hospital at Rolla and the Missouri Tuberculosis Sanatorium at Mt. Vernon by employing certified teachers and instructors and purchasing equipment from any moneys appropriated for that purpose."

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Section 10405.3 provides:

"The County Superintendent of Schools in counties where such hospitals are located shall establish standards, supervise training, and certify credits in the same manner as for children in organized school districts."

Under the provisions of the above-quoted act the Division of Health of the Department of Public Health and Welfare is authorized to provide for the teaching and training of the children patients in the sanatorium at Mt. Vernon and pay for same out of money appropriated for that purpose. The County Superintendent of Schools of Lawrence County, the county in which Mt. Vernon is located, is required to establish the standards, supervise training and certify credits for such children receiving instruction at the sanatorium in the same manner as for children in organized school districts.

Consequently, it appears that the Legislature has enacted specific legislation to provide for the education of the children in the sanatorium at Mt. Vernon.

Regarding the crippled children in the hospital at Columbia and in the Blosser Home at Marshall, we find no specific statute providing for their instruction as we did for the children who are resident patients at Mt. Vernon. However, with reference to certain types of defective children, Section 10351, Laws of Missouri, 1947, Vol. II, page 384, provides:

"Whenever in any school district there shall be found children between the ages of 6 and 20 years who are physically handicapped, including the blind or partially seeing, the deaf or hard of hearing, the crippled and the mentally deficient or mentally retarded, but who are capable of instruction, but yet who cannot be safely and adequately educated in the public schools with normal children, the board of education or board of directors of the district may provide appropriate instruction in special classes for such children, and when provision is made for such special classes and instruction, shall provide transportation to and from school for such of said children as cannot otherwise attend such school. Instruction, which is adapted to the varying physical and mental capacities and handicaps of the children

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must be provided for such children in accordance with regulations prescribed by the state commissioner of education; Provided, however, when any of the children named herein cannot economically, safely or conveniently attend classes, the board of education or board of directors of the school district may provide a properly qualified and certified tutor, instructor, or home teacher for the purpose of instructing such children. Five hours of such tutoring or instruction in the homes of the children shall be considered to equal one week's school work per pupil. It shall be the duty of the board of education or the board of directors in each school district to ascertain annually the number of children of its district who belong to any of the above types."

(Emphasis ours.)

The above section in its reference and application to defective children includes the category of crippled children, as referred to in your letter.

In reading the above-quoted statute, and particularly the underscored language, it appears that the educational instruction of the defective children referred to therein is a discretionary matter with the school districts in which such children are found. Thus, the statute reads that "the board of education or board of directors of the school district may provide" appropriate instruction in the nature of special classes or home instruction, depending upon the circumstances of the children. The word "may" as used in the statute denotes a permissive or directory application rather than being mandatory insofar as the school districts furnishing instruction are concerned.

In applying the rules of statutory construction, the use of the term "may" in a statute in its ordinary sense means that which is permissive or directory and not mandatory. State ex rel. Coleman v. Blair, 151 S.W. 148, 245 Mo. 680; Lansdown v. Faris, C.C.A. Mo., 66 Fed. (2d) 939; Volume 26, Words and Phrases, Perm. Ed., page 774, et seq. In the case of State v. Morgan, 112 So. 865, 147 Miss. 121, there was involved a statute authorizing county school boards in certain occasions to create rural school districts. The word "may" was used in the statute relating to the school board exercising its authority, and the court held that it was used in a discretionary and not a mandatory sense and that where the school board refused to create a rural district it could not be compelled to do so by mandamus.

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However, in considering the question at hand it is a primary duty to ascertain and give effect to the lawmaker's intent. *Kansas City v. J. I. Case Threshing Machine Co.*, 87 S.W. (2d) 195, 337 Mo. 913; *Weyering v. Miller*, 51 S.W. (2d) 65, 330 Mo. 885; *Union Electric Company v. Morris* (Sup.), 222 S.W. (2d) 767. We further should construe all statutes together which are applicable to the subject involved and harmonize them. *State v. Naylor*, 40 S.W. (2d) 1079, 328 Mo. 335.

With these rules in mind attention is directed to Section 10355, Laws of Missouri, 1947, Vol. II, page 385, which, with Section 10351, supra, and other sections, was enacted by the passage of Senate Committee Substitute for House Bill No. 126, referred to in your letter. Section 10355 provides:

"School districts shall establish special classes when there are ten or more children, who are so retarded as to be incapable of receiving proper benefit from the instruction in the regular grades, and shall receive state aid as provided in Section 10353." (Emphasis ours.)

It appears that the language of the above statute is mandatory in its meaning, for the use of the word "shall" in its ordinary sense indicates a mandatory statute. *State ex rel. Stevens v. Wurdeman*, 246 S.W. 189, 295 Mo. 566.

Section 10355 in its reference to children who are to benefit from its provisions names those "who are so retarded as to be incapable of receiving proper benefit from the instruction in the regular grades," and we believe that its application would be directed to those types of defective children named in the other sections of the act who are physically or mentally retarded.

It is apparent in reading the sections herein cited, as well as the others contained in Senate Committee Substitute for House Bill No. 126, Laws of Missouri, 1947, Vol. II, pages 383, et seq., that the Legislature has recognized the problem of providing educational instruction for defective children.

It is therefore our view of the matter that the Legislature has left the education of certain defective children within the discretion of the school district wherein such children are

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found, but with definite limitations. And, where within a school district there are found ten or more children who are so retarded as to be incapable of receiving benefit from the instruction given in the regular grades but are able to attend special classes, then such district shall establish special classes for the purpose of instructing such children. The Legislature has further recognized the financial burden that would be incurred by school districts in providing special classes for defective children and has therefore provided state aid for such districts in the manner set out in Section 10353 of the act.

In view of the foregoing it is our thought that the education of crippled children now in the institutions to which you refer in your letter would fall within the provisions of the act herein cited and contained in the Laws of Missouri, 1947, Vol. II, pages 383, et seq.

CONCLUSION.

In the premises, it is the opinion of this office that the Division of Health of the Department of Public Health and Welfare is authorized to provide for the teaching and training of children who are resident patients confined in the Missouri Tuberculosis Sanatorium at Mt. Vernon by employing certified teachers and instructors and providing the necessary equipment, the cost of which to be paid out of moneys appropriated for that purpose. It is our further opinion that if there are ten or more crippled children in the hospital at Columbia and in the Blosser Home at Marshall who are able to attend special classes yet are incapable of receiving proper benefit from the instruction in the regular grades, then the school districts in which such children are found shall establish special classes for the instruction of such children.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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