

SCHOOLS:
SCHOOL BOARDS:
VACCINATIONS:
PHYSICIANS:
PHYSICAL EXAMINATIONS:
DENTISTS:
DENTAL EXAMINATIONS:
SCHOOL COURSES:

(1) School boards may make rules and regulations requiring compulsory vaccination only where there is a threat of epidemic or an actual epidemic. (2) School boards may make rules and regulations requiring tuberculosis and general physical tests by a physician to determine existence of contagious or infectious diseases. (3) School boards may not require a dental examination by a dentist as a prerequisite to attendance in school, because a dentist is not a physician. (4) A school board may require a child in secondary school to take certain health courses as prerequisites to graduation.

Opin No. 22 ('62)
" " 371 ('61)

March 27, 1962

Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County
Court House
Clayton, Missouri



Dear Mr. Anderson:

This is in reply to your letter of October 10, 1961, inclosing a letter from George W. Vossbrink and requesting an opinion from this office on the following four questions:

- "1. Can a board of education require vaccination when there is no indication that smallpox is prevalent?
- "2. Are tuberculosis and general physical tests included under its 1935 ruling for medical inspections for the purpose of determining the existence of a contagious or infectious disease?
- "3. May dental examinations be required as a pre-requisite to attendance in school?
- "4. Can the board of education require that a child in secondary school take certain health courses as pre-requisites to graduation?

We will answer the questions in the order presented.

Section 163.010, RSMo 1959, reads, in part, as follows:

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"The board of directors or board of education shall have power to make all needful rules and regulations for the organization, grading and government in their school district -- said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, * * * ."

In the case of *In the Matter of Rebenack*, 62 Mo. App. 8, the St. Louis Court of Appeals upheld a rule of a school board that all children must be vaccinated. The opinion in that case does not disclose whether an epidemic was present or threatened in the school district.

In the case of *State ex rel. O'Bannon v. Cole*, 220 Mo. 697, 119 SW 424, the Supreme Court of Missouri upheld a similar rule requiring compulsory vaccination in a school district where there was an actual smallpox epidemic.

On October 29, 1935, this office issued an opinion to the State Board of Health, Jefferson City, Missouri, in which it was held that the board of education of a school district is authorized to make reasonable rules and regulations respecting compulsory vaccination and medical inspection, and that the reasonableness of such rules and regulations are to be determined by the facts existing at the time the rules are made, and that, without question, a rule providing for a compulsory vaccination without expense to the pupil when smallpox is prevalent within the district, would be reasonable, as would a rule providing for medical inspection for the purpose of determining the existence of contagious or infectious disease or the liability of transmitting the same.

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On October 14, 1946, this office issued an opinion to Honorable A. L. Gates, Prosecuting Attorney, Moniteau County, California, Missouri, in which it was held that if there is an epidemic or threat of an epidemic of smallpox, then the school board is authorized to adopt an order requiring all children to be vaccinated against smallpox before they are permitted to enroll and attend school; otherwise not.

The 71st General Assembly enacted a law, effective October 13, 1961, now Section 163.017, RSMo Cum. Supp. 1961, which reads, in part, as follows:

"1. The division of health of the department of public health and welfare, after consultation with the department of education, shall promulgate rules and regulations governing the immunization against poliomyelitis, smallpox, and diphtheria, to be required of children attending public, private, parochial or parish schools. Tetanus and pertussis may be included in the vaccine administered. The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice. The division of health of the department of public health and welfare shall supervise and secure the enforcement of the required immunization program.

"2. It is unlawful for any student to attend school for longer than one month unless he has been immunized, as required under the rules and regulations of the division of health of the department of public health and welfare, and can provide satisfactory evidence of such immunization; provided, that, if within the month, he produces satisfactory evidence of

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having begun the process of immunization, he may continue to attend school as long as the immunization process is being accomplished in the prescribed manner. It is unlawful for any parent or guardian to refuse or neglect to have his child immunized, as required by this section, unless the child is properly exempted.

"3. This section shall not apply to any child if one parent or guardian objects in writing to his school administrator against the immunization of the child."

We are of the opinion that Section 163.017, RSMo Cum. Supp. 1961, does not require any change in the opinions of this office, as expressed in the opinion of October 29, 1935 to the State Board of Health, and the opinion of October 14, 1946 to Honorable A. L. Gates. Section 163.017 does not abrogate the power of local school boards to make rules and regulations under the provisions of Section 163.010, RSMo, and, when reasonable rules are promulgated under the authority of Section 163.010, RSMo, there is no conflict between such rules and Section 163.017. Section 163.017 contemplates and establishes a program of immunization to be conducted by the Division of Health of the Department of Public Health and Welfare. Such immunization program is not in lieu of any local vaccination program of a school district, but it is an entirely separate, distinct, and additional immunization program on a statewide basis. Of course, any rules and regulations of a school board under the authority of Section 163.010 must be reasonable and they must not be in conflict with any state law; and, therefore, any rule of the school board respecting immunization or vaccination of school children cannot be in direct conflict or in opposition to the provisions of Section 163.017, RSMo Cum. Supp. 1961.

Therefore, in answer to your first question, it is the opinion of this office that there is no change in the

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authority of a school board to make reasonable rules concerning the vaccination of school children in that district, and the opinion of this office expressed in the opinion of October 29, 1935 to the State Board of Health, and the opinion of October 14, 1946 to Honorable A. L. Gates remains unchanged. Hence, the Board of Education may not require vaccination when there is neither an existing nor a threatened epidemic of smallpox.

In answer to the second question concerning tuberculosis and general physical tests, it was held in the opinion of October 29, 1935 to the State Board of Health that the school district was authorized to make reasonable rules and regulations respecting a medical inspection; that the reasonableness of such rules and regulations are to be determined by the facts existing at the time the rules are made, and that a rule providing for medical inspection for the purposes of determining the existence of contagious or infectious disease or the liability of transmitting the same would be reasonable. Webster's dictionary defines "tuberculosis" as "an infectious disease caused by the tubercle bacillus." Since tuberculosis is an infectious disease, any rule of the school board under authority of Section 163.010, RSMo 1959, requiring any child to be examined by a physician for the purpose of determining the diseased condition, or the liability of transmitting such disease, would certainly be reasonable and proper.

In answer to the third question, we refer you to Section 163.360, RSMo 1959, which reads, in part, as follows:

"It shall be unlawful for any child to attend any of the public schools of this state while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to the same. For the purpose of determining the diseased condition, or the liability of transmitting such disease, the teacher or board of directors shall have power to require any child to be examined by a physician

or physicians, and to exclude such child from school so long as there is any liability of such disease being transmitted by the same. A refusal on the part of the parent or guardian to have an examination made by a physician or physicians, at the request of the teacher or board of directors, will authorize the teacher or board of directors to exclude such child from school; * * * ."

The answer to this question will then depend upon the character of the dental examination and the person or physician who conducts the examination. Certainly, there are infectious and contagious diseases of the mouth and teeth, and a reasonable rule requiring an examination by a physician to determine the diseased condition or the liability of transmitting such disease would be proper, in the same manner as any other examination authorized under the conditions prevailing in the second question answered above. However, an examination by a dentist to discover or treat cavities in the teeth presents a different situation. Section 163.360, RSMo, authorizes the examination to be made by a physician or physicians. The general definition of a "physician" in Webster's dictionary is given as, "A person skilled in ... the art of healing; one duly authorized to treat diseases" And Section 332.010, RSMo 1959, gives a definition of a "dentist" as "Any person ... who shall treat or profess to treat, or advertise as treating, any disease or disorder or lesions of the oral cavity, teeth, gums, maxillary bones, or extract teeth, or repair or fill cavities"

However, we do not believe this is sufficient to classify a dentist as a physician in the sense in which the word "physician" is used in Section 163.360. Section 334.021, RSMo 1959, states as follows:

"Where other statutes of this state use the terms 'physician', 'surgeon', 'practitioner of medicine', 'practitioner of osteopathy', 'board of medical examiners', or 'board of osteopathic registration and examination' or similar terms, they shall be construed to mean physicians and surgeons

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licensed under this chapter or the state board of registration for the healing arts in the state of Missouri."

Under the definition of a "physician" in Section 334.021, RSMo 1959, a dentist is not a physician, because a dentist is not licensed under Chapter 334., RSMo, and a dentist is not licensed under the State Board of Registration for the Healing Arts in the State of Missouri. Rather, a dentist is licensed under Chapter 332., RSMo, and is under the Missouri Dental Board. Therefore, our answer to the third question is that a dentist is not a physician within the meaning of that term as used in Section 163.360, and a school board does not have authority to require a dental examination by a dentist as a prerequisite to attendance in school.

In answer to the fourth question, we again rely on the authority of the school board expressed in Section 163.010 which is quoted above. Since the school board may make all needful rules and regulations for the organization, grading and government in their school district, a reasonable rule requiring a child in secondary school to take certain health courses as a prerequisite to graduation would seem proper. As further authority, we call your attention to Section 163.170, RSMo 1959, which reads as follows:

"Physiology and hygiene, including their several branches, with special instruction as to tuberculosis, its nature, causes and prevention, and the effect of alcoholic drinks, narcotics and stimulants on the human system, shall constitute a part of the course of instruction, and be taught in all schools supported wholly or in part by public money or under state control."

We do not know the exact nature of the "certain health courses" mentioned in the opinion request, but we believe that the usual and normal courses on general health would be included within the phrase "physiology and hygiene" which are required as a constituent part of the course of instruction in all schools by Section 163.170. We are therefore of the opinion that the Board of Education may require that a child in secondary school take certain health courses as a prerequisite to graduation.

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CONCLUSION

It is therefore the opinion of this office, as follows:

1. The Board of Education of a school district is authorized to make reasonable rules and regulations respecting compulsory vaccination or immunization of school children where there is a threat of epidemic or an actual epidemic, and the reasonableness of such rules and regulations are to be determined by the facts existing at the time the rules are made, but the Board of Education does not have such power except where there is a threat of epidemic or an actual epidemic.

2. The Board of Education of a school district is authorized to make rules and regulations respecting tuberculosis tests and general physical tests, to be included in an examination of the children of the school district, by a physician or physicians for the purpose of determining the existence of contagious or infectious disease, or the liability of transmitting the same.

3. The Board of Education of a school district does not have authority to require a dental examination by a dentist as a prerequisite to attendance in school, because a dentist is not a physician within the meaning of that term as used in Section 163.360.

4. The Board of Education of a school district may require that a child in secondary school take certain health courses as prerequisites to graduation under authority of Sections 163.170 and 163.010, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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