

SCHOOLS:  
COMPULSORY SCHOOL ATTENDANCE:  
MINORS:

Neither the parents nor the husband of a married child under sixteen years of age have the charge, control or custody of such married child within the meaning of the compulsory school attendance law of Missouri.

OPINION NO. 84

March 29, 1963

Honorable Don E. Burrell  
Prosecuting Attorney  
Greene County  
Springfield, Missouri



Dear Mr. Burrell:

This is in reply to your letter of January 29, 1963, in which you requested an opinion of this office on the following questions:

" Is a child under 16 years of age, who is married, sufficiently emancipated from the 'charge, control or custody' of her parents so as to relieve the parents from the criminal responsibility for failing to cause the child to attend school regularly? If so, then:

"By marrying a child under the age of 16, does a man take on the responsibility required by Section 164.010 to cause the said child to attend school regularly?"

The compulsory school attendance law in Missouri is contained in Section 164.010, RSMo 1959, the first paragraph of which reads as follows:

"Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and sixteen years shall cause the child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which the child attends is in session or shall provide the child at home with regular daily instructions during the usual school

hours which shall, in the judgment of a court of competent jurisdiction, be at least substantially equivalent to the instruction given children of like age in the day schools in the locality in which the child resides."

We have been unable to find any case in Missouri which specifically answers your particular question and we have therefore turned to the decisions in other jurisdictions for guidance.

The general rule is stated in 67 C.J.S. Sec. 89 c, page 816, that " \* \* \* It is settled that the marriage of a minor child with the consent of the parent works an emancipation of the child, \* \* \*."

In the case of *In re State in interest of Goodwin*, 214 La. 1062, 39 So. 2d 731, l. c. 733, it is said:

" . . . Clydell is irrevocably emancipated by this marriage as a matter of right. . . . And although until she reaches the age of 18 she is not relieved of all of the disabilities that attach to minority by this emancipation, she is relieved of parental control and, . . . . is no longer amenable to the compulsory school attendance law of this state. Furthermore, having acquired the status of a wife, it is not only her right but also her duty to live with her husband at their matrimonial domicile and to follow him wherever he chooses to reside."

The applicable statute in Louisiana is similar to the Missouri statute in that the Louisiana statute provides:

" \* \* \* every parent, guardian, or other person \* \* \* having control or charge of any child \* \* \* shall send such child to \* \* \* school". (Act No. 239 of 1944, Louisiana.)

In the case of *State v. Priest*, 27 So. 2d 173, 174 the Supreme Court of Louisiana said:

"This Court, in *State v. Golden*, 26 So. 2d 837 held that while the performance of a marriage ceremony by public officials of females between the ages of 14 and 16

is prohibited by law and the public officials who perform such marriage are subject to the penalties provided by the Act, nevertheless, such marriage once performed becomes a valid and legal marriage (if there are no legal impediments other than age), and that the female minor thus married enjoys the status of a wife and has a right to live at the matrimonial domicile of her husband and is no longer under the control of her parents.

" [1] The marriage relationship, regardless of the age of the persons involved, creates conditions and imposes obligations upon the parties that are obviously inconsistent with compulsory school attendance or with either the husband or wife remaining under the legal control of parents or other persons. Though young, the husband is none the less required to support his wife and family. The wife, in the event there should be a child in the family, could hardly be expected to attend school during the weeks preceding or following its birth.

" [2,3] It might be argued that theatrix comes within the provisions of Act No. 239 of 1944 on the theory that her husband could be considered as a ' \* \* \* person \* \* \* having control or charge of any child \* \* \*.' Article 2404 of the Revised Civil Code provides that 'The husband is the head and master of the partnership or community \* \* \*' between himself and his wife but this, of course, is primarily a rule for the control of common property. No reasonable man, particularly one who has been married for many years, would contend that the husband, by virtue of the provisions of the above article or any other law, has 'control or charge' of his wife in the manner formerly exercised by the parent or guardian."

Honorable Don E. Burrell - 4

In the case of *In re Rogers*, 234 N.Y.S. 2d 172, the Family Court of Schuyler County, New York held that compulsory education laws do not require school attendance by a female child under sixteen years of age, against her will, when married and residing with and maintaining a household for her husband.

On the basis of these authorities we are of the opinion that a child under sixteen years of age who is married is relieved from the charge, control or custody of her parents within the meaning of Section 164.010 RSMo 1959. We are further of the opinion that the husband of a female minor under sixteen years of age does not have the charge, control or custody of his wife within the meaning of the provisions of Section 164.010 RSMo 1959.

#### CONCLUSION

It is therefore the opinion of this office that neither the parents nor the husband of a married child under sixteen years of age have the charge, control or custody of such married child within the meaning of the compulsory school attendance law of Missouri.

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

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

WWW:df