

Answer by letter-Hoecker

August 12, 1969

OPINION LETTER NO. 131

Honorable Harold L. Volkmer  
State Representative, District 100  
120 North Third Street  
Hannibal, Missouri 63401

Dear Representative Volkmer:

This is in answer to your recent request concerning the meaning of the term "nursery school" as used in subsection (4) of Section 210.211, RSMo 1959, and any relationship such term has with Section 210.201, RSMo 1959.

Sections 210.201 to 210.245, RSMo 1959, concern the licensing by the Division of Welfare of designated institutions providing custodial care for children. Three institutions subject to the licensing requirements are "boarding home for children," "day care home," and "day nursery" and are defined in Section 210.201, RSMo. Such section provides in part as follows:

"(1) 'Boarding home for children' shall be held to mean a house or other place conducted or maintained by any person who advertises or holds himself out as conducting, for compensation or otherwise, a boarding house or place of residence for one or more children who are unattended by parent or legally appointed guardian, except day care homes or day nurseries as defined in sections 210.201 to 210.245;

(2) 'Day care home' or 'day nursery' shall be held to mean a house or other place conducted or maintained by any person who advertises or holds himself out as providing care for more than four children during the daytime, for compensation or otherwise, except those operated

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by a school system or in connection with a business establishment as a convenience for its customers, and except boarding homes for children as defined in sections 210.201 to 210.245;"

While Section 210.211, RSMo 1959, requires the licensing of all institutions falling under the statutory definitions of Section 210.201, RSMo 1959, subsections 1 through 6 of Section 210.211, RSMo 1959, except from this licensing requirement of certain institutions. Subsection 4 of Section 210.211 lists "nursery school" as one of the institutions excepted from the licensing requirements.

Section 210.211 provides in part as follows:

"It shall be unlawful for any person to establish, maintain or operate a boarding home for children, a day care home or day nursery for children, or a child placing agency as defined in sections 210.201 to 210.245, or to advertise or hold himself out as being able to perform any of the services as defined in section 210.201, without having in full force and effect a written license therefor granted by the division of welfare, provided that nothing in sections 210.201 to 210.245 shall apply to:

"(4) any graded boarding school, nursery school, summer camp, hospital, sanitarium or home which is conducted in good faith primarily to provide education, recreation, medical treatment, or nursing or convalescent care for children;"

From the definition of "boarding home for children," "day care home," and "day nursery," it is seen that licensing requirements apply to institutions the primary function of which is to furnish only custodial care for children.

While Section 210.211 (4) includes several institutions and lists several primary functions which may be performed by such institutions, it is clear that in order to come within the definition of "nursery school" an institution must be conducted primarily to provide education for children. It is therefore our view that an institution in order to be classified as a "nursery school" which is exempt from licensing requirements must be operated primarily for educating children.

Yours very truly,

JOHN C. DANFORTH  
Attorney General