

SCHOOLS:
TUITION:

Article IX, Section 1(a), of the Missouri Constitution of 1945 forbids a school district from charging any fee to any resident student who wishes to enroll in any course offered for academic credit.

OPINION NO. 269

December 1, 1972

Honorable Joseph W. Hill
State Representative
1438 East 78th Street
Kansas City, Missouri 64131

FILED
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Dear Representative Hill:

This opinion is in response to your request for a ruling on the following question:

"Is it legal for a six-member public school board to charge a \$35.00 fee per student to take an automobile driver's training course?"

The facts as they appear in your request are that a school district offers an optional driver's training course as a part of its high school curriculum. Academic credit is given for the course, and a \$35.00 fee is required. We understand that the amount of the fee is not related to the cost of operating the course.

Every Constitution of the state of Missouri since 1865 has included provisions for free public schools. The current requirement appears in Article IX, Section 1(a) of the present Constitution which states, in relevant part, the following:

"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. . . ."

Pursuant to this constitutional mandate the legislature has provided for free schools in one of the opening sections of the Missouri School Laws, Section 160.051, RSMo 1969, which reads, in relevant part, as follows:

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"A system of free public schools is established throughout the state for the gratuitous instruction of persons between the ages of six and twenty years. . . ."

Thus, both the people of Missouri in enacting the Constitution, and the legislature of Missouri in implementing the Constitution, have required the public schools of Missouri to be free and have required that they provide gratuitous instruction for all persons between certain ages.*

In interpreting a constitutional provision like this, we are bound by the natural and plain meanings of the words involved. State ex rel. Heimberger v. Board of Curators of University of Missouri, 188 S.W. 128 (Mo. Banc 1916). Webster's Third New International Dictionary defines "free" as meaning "not costing or charging anything; given or furnished without cost or payment" and gives as an example "a free school." "Gratuitous" is defined in the same dictionary as meaning "costing the recipient or participant nothing: free." The fact that the Constitution of Missouri contains not one but both of these terms requires the conclusion that the Constitution prohibits Missouri schools from charging their pupils anything for the privilege of taking courses offered by those schools.

There is another meaning of "free" which might apply to public schools. This is that the schools shall be open to all students without regard to their background or to the wealth of their parents. See Speeches of Delegates Fyan and Norton, IX Debates of Missouri Constitutional Convention of 1875 (1942 Ed.), at 66, 72. However, schools cannot be said to be genuinely "free" to all in this sense if there are admission fees to some courses. A fee has the effect of denying to some students on the basis of wealth the ability to take a course. It was no doubt recognition of this circumstance that led Mr. Fyan, in the speech cited above, to include as a second part of his definition, the requirement that the schools be supported at public expense. Further, the added requirement in the Constitution for "gratuitous instruction" would seem to confirm that the delegates wanted "free" to mean both "open" and "without cost."

There is considerable judicial support for the proposition that a constitutional provision for free public schools does not

*This opinion is not concerned in any way with charges for tuition made to students who are not residents of the school district involved.

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permit the imposition of school fees. The general rule is that a requirement for free schools will invalidate any fee, whether denominated tuition, matriculation fee, registration fee, library fee, incidental fee, or anything else. See State ex rel. Roberts v. Wilson, 297 S.W. 419 (Spr.Ct.App. 1927), and cases collected at Anno., Validity of Public School Fees, 41 A.L.R.3d 752. Fees have been allowed only in states with significantly different constitutional or statutory provisions. See, e.g., Vincent v. County Board of Education of Talladega County, 131 So. 893 (Ala. 1931) (constitutional provision for "liberal system of public schools"); Felder v. Johnston, 121 S.E. 54 (S.C. 1924) (statutory authority for fees).

In recent years, two leading cases have affirmed and amplified the view that free schools may not require fees. In the first case, the Idaho state supreme court interpreted a constitutional requirement of "public, free common schools" to forbid any required fees, even those charged for the school activity ticket, newspaper and yearbook. Paulson v. Minidoka County School District No. 331, 463 P.2d 935 (Idaho 1970). The second case went further and interpreted a constitutional requirement for "free public elementary and secondary schools" as not only prohibiting any fees charges by the school, but also imposing an affirmative duty on school districts to supply all school supplies to students without cost. Bond v. Public Schools of Ann Arbor School District, 178 N.W.2d 484, 41 A.L.R.3d 742 (Mich. 1970). Neither of these states had in its constitution the double requirement of "free public schools" and "gratuitous instruction" that appears in Missouri, yet both found all fees required of students to be unconstitutional.

This office issued a related opinion to Donald J. Gralike, No. 206, dated October 23, 1969, in which we stated that a school may not penalize or punish in any way a student who does not furnish materials required in a course. Since not having supplies or books that have been required and therefore being unable to participate fully in daily class exercises is itself a form of penalty, that prior opinion is applicable in principle here. However, since much of Opinion No. 206-1969 deals with a statute (§170.051, RSMo 1969) which has since been repealed, that opinion is hereby withdrawn.

It could be argued that since driver's training is not a required course in the school district involved, a fee for this course might properly be charged. The Missouri Constitution, however, makes no such distinction between courses which are required of all students and those which are not. In the 1875 Constitutional Convention, the last time the concept of free schools was seriously challenged in Missouri, one delegate offered an amendment which would

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have limited gratuitous instruction to the subjects of spelling, reading, writing, arithmetic, grammar, geography, and American history; the delegates rejected this amendment and chose instead the language which still appears in the Missouri Constitution. II Journal of the Missouri Constitutional Convention of 1875 (1920 Ed.) 580-582. Since 1875, elective courses have become an integral part of Missouri education, and the State Board of Education currently requires at least six units of electives (which may include credit for driver's education) to be successfully completed before a student may be graduated. The School Administrators Handbook (Missouri State Board of Education, 1969 Ed.), pp. 116-119. On the question of fees, we can see no legal basis for distinguishing between any courses, required or elective, for which credit is given towards graduation.

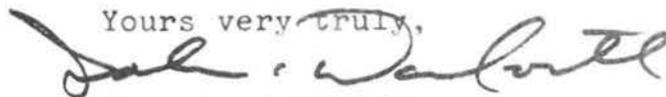
It is also noted in the facts that the \$35.00 fee might not be related to the actual cost of giving the course. This fact, however, is not necessary for the conclusion reached here. Even a fee used solely to reimburse the actual cost of teaching the course would not be permissible under the Constitution and statutes of Missouri. Every course offered by a school costs that school money. A driver's education course requires the purchase of gasoline, but similarly, a chemistry course needs chemicals, a physics laboratory uses electricity, a secretarial course requires typewriter ribbons and carbon paper, a shop course requires both tools and supplies for the students to use, and even an American history course requires chalk and the customary map showing the territorial expansion of the United States. Each of these is a cost that the school would not incur if the course were not given, but such costs are merely part of the expenses of running a school, and stand on the same legal basis as maintenance and teachers' salaries, insofar as fees are concerned. There is no authority in the Constitution or statutes for allowing any of these costs to excuse the school district from its duty of providing "gratuitous instruction" to all students who are properly enrolled in its schools.

CONCLUSION

Therefore, it is the opinion of this office that Article IX, Section 1(a), of the Constitution of Missouri of 1945 forbids a school district from charging any fee to any resident student who wishes to enroll in any course offered for academic credit.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,



JOHN C. DANFORTH
Attorney General