March 20, 1973

OPINION LETTER NO. 74
Answer by letter-Vodra

FILED
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Honorable Cloy E. Whitney
Representative, District 2
Room 202D, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Whitney:

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

> "Is Section 171.011 of the Missouri school laws, relating to grading of students, in violation of the U.S. Constitution under the 14th amendment because of discrimination of public school students due to the lack of a fair and equal standard guideline for grading in the State of Missouri?"

Based on the facts you provide, we understand your primary concern to be that "grades are frequently determined by social status, sex, race, [or] color," or by other factors irrelevant to the quality of a student's work.

Section 171.011, RSMo 1969, reads as follows:

> "The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. The rules shall take effect when a copy of the rules, duly signed by order of the board, is deposited with the district clerk. The district clerk shall transmit forthwith a copy of the rules to the teachers employed in the schools. The rules may be amended or repealed in like manner."

Honorable Cloy E. Whitney

Section 171.011 is one part of the general statutory scheme which transfers the day-to-day operation of Missouri schools to local school boards. The choice of leaving student evaluation methods to local schools where any problems can be easily resolved and where flexibility can be retained is a legislative decision which is not without a rational basis and which the General Assembly could reasonably make. The legislature did more than merely delegate the grading power, however; procedures are set down for the promulgation of "all needful rules and regulations" and for the filing of those rules. Thus, the legislature has authorized a grading system; it has not authorized arbitrary action.

Because we believe that both the substance and procedure contained in Section 171.011 bear a rational relation to a legitimate state interest, we do not find the section on its face to be in violation of the Fourteenth Amendment to the United States Constitution.

The validity of any particular grading system is a determination beyond the competence of this office. A grading system must be reasonable within the goals of a school district, but many factors which differ between districts could make a particular grading system more appropriate in one place than in another. Decisions as to the validity of such a system are best left to persons with educational expertise, and any challenge should be made in a judicial proceeding where all viewpoints could be fairly considered.

However, if a school district or one of its employees uses a grading system as a vehicle for discrimination against any person because of the person's race, creed, sex or social status, then there is a violation of that person's constitutional rights. Just as a school district cannot discriminate in school attendance on account of race, Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), neither can they discriminate in the way they treat students within the classroom. Hobson v. Hansen, 269 F.Supp. 401 (D.D.C. 1967), aff'd and modified sub nom Smuck v. Hobson, 408 F.2d 175 (D.C.Cir. 1969). Nothing in Section 171.011 permits such discrimination.

Thus in short, we believe that Section 171.011, RSMo 1969, is valid on its face, but that any attempt to discriminate against a student in grading because of the student's race, creed, sex or social status would be a violation of the Fourteenth Amendment to the United States Constitution.

Yours very truly,

JOHN C. DANFORTH
Attorney General