



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

December 7, 2021

Dear Missouri Local Public Health Agencies:

Last month, a Missouri court issued a significant judgment that you should begin following immediately. *See Robinson v. Missouri Dept. of Health and Senior Services*, 20AC-CC00515, Judgment (Cole County Cir. Ct. Nov. 22, 2021). The judgment includes the following orders that are relevant to you:

- 1) This court declares that 19 CSR 20-20.040(2)(G)-(I), 19 CSR 20-20.040(6), including references to discretionary control measures contained in 19 CSR 20-20.010 et seq., violate the Missouri Constitution and Missouri statutes and are therefore invalid.
- 2) This court declares that 19 CSR 20-20.050(3) violates the Missouri Constitution and Missouri statutes and is therefore invalid.
- ...
- 5) Consistent with Plaintiffs' request for relief that this Court deems just and proper, DHSS and local health authorities are ordered to refrain from taking actions pursuant to 19 CSR 20-20.010 et seq. that require independent discretion in a manner inconsistent with this opinion and inconsistent with the constitution's limitation on legislative delegations and the APA's limitations on rulemaking authority. This includes discretionary verbal or written orders for which the legislature has failed to provide specific standards or guidelines, and to the extent that standards or guidelines for a particular action have been provided, they must be followed.
- 6) Plaintiffs presented evidence that students are being excluded from schools by discretionary written or verbal order or direction of local health authorities. Consistent with Plaintiffs' request for relief that this Court deems just and proper, and to eliminate the need for additional plaintiffs to request this Court strike invalid applications of DHSS regulations regarding communicable disease, this Court directs DHSS to instruct local health authorities to refrain from issuing verbal or written orders regarding circumstances under which children can be excluded from school. 19 CSR 20-20.030(1) specifically provides that 'persons suffering from a reportable disease or who are liable to transmit a reportable disease listed in 19 CSR 20-20.020(1)-(3) shall be barred from attending school.' 'Liable' means in a position to incur transmission (<https://www.merriam-webster.com/dictionary/liable>). Without determining whether 19 CSR 20-20.030 is constitutional, it is clear that any quarantine and

Supreme Court Building

207 W. High Street
P.O. Box 899

Jefferson City, MO 65102

Phone: (573) 751-3321

Fax: (573) 751-0774

www.ago.mo.gov

isolation rules, or rules that exclude students from school, created by a local health authority outside the language of 19 CSR 20-20.030, are prohibited.

- 7) Consistent with Plaintiffs' request for relief that this Court deems just and proper, this Court orders that any and all discretionary orders or rules, whether written or verbal, that have been issued outside the protections of the Missouri Administrative Procedure Act and constitute a statement of general applicability that implements, interprets, or prescribes law or policy, or close a business based on the opinion or discretion of an agency official without any standards or guidance, by Director of the Department of Health and Senior Services and all local health authorities as defined by 19 CSR 20-20.010(26), are null and void.

Id. at pp. 16-17. A copy of the judgment is enclosed for your reference.

Under this judgment, all mask mandates, quarantine orders, and other public health orders that are based on any of the invalidated regulations or issued outside the protections of the Missouri Administrative Procedure Act are null and void. You should stop enforcing and publicizing any such orders immediately.

Failure to follow the court's judgment may result in enforcement action against you to remove orders the court has determined are unconstitutional and illegal. We encourage you to take immediate action to remove all unconstitutional and illegal orders.

Very Truly Yours,



Eric S. Schmitt
Attorney General

Enclosure