

BARBER Section 13529, page 188, Laws of Missouri,  
1937, requiring a permit not applicable to  
SCHOOL Missouri School for the Deaf.

October 25, 1939

10-27

Mr. Truman L. Ingle,  
Superintendent  
Missouri School For The Deaf  
Fulton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of October 16, 1939, which reads as follows:

"We have a situation here at the School for the Deaf about which I am quite concerned.

"In our vocational department we have a barber shop in which our boys are instructed in the barbering trade. In order to be recognized, it is necessary that a licensed instructor in barbering be employed. However, I understand there is some regulation which calls for two such instructors and that the number of pupils be limited to ten to an instructor. We do not have a sufficient number of students to employ two instructors. Our barbering class averages eight to ten, and therefore, we meet the requirements as to the number of students to an instructor.

"Also, I understand there is a fee of one hundred dollars to be paid into the state by the regular barber schools. I am writing to ask if you will be good enough to give me an opinion as to whether or not the Missouri School for the Deaf, which is a state department, is obligated to pay this one hundred dollar fee. It seems to me that we should be exempt from such payment.

"I will appreciate greatly such an opinion together with an opinion in regard to employment of two instructors in a school such as ours.

"If it is necessary for us to meet these requirements, we will be compelled to do away with this department, which is one of the most important phases of our work."

From your letter we gather that one of the most important phases of your work is the instruction in the barber trade. We assume the Missouri School for the deaf has carried this subject as part of its curriculum for many years, and to now hold that this school is required to pay a one hundred dollar permit fee to instruct in this trade would abolish such instruction in the institution.

The Missouri School for the Deaf is an educational institution of the State of Missouri as provided in Section 9688, R. S. Missouri, 1929, as follows:

"The 'Missouri School for the blind' at Saint Louis, and the 'Missouri School for the deaf' at Fulton shall be regarded, classed and conducted wholly as educational institutions of the state."

Section 9696 R. S. Missouri, 1929, provides who may attend the Missouri School for the Deaf and reads as follows:

"All blind and deaf persons under twenty-one (21) years of age, of suitable mental and physical capacity, who are residents of this state, shall be entitled to admission to the school for the blind and the school for the deaf, respectively. All admissions and discharges, and the length of the period of instruction of each pupil, shall be determined by the board of managers."

Section 9703, R. S. Missouri, 1929, explains the object for the Missouri School for the Deaf, as follows:

"The object of the school for the deaf shall be to educate this class of persons in the use of written and spoken language, the elementary branches and in mechanical trades and industrial pursuits. Such training shall be given in such trades as shall fit the deaf boy or girl for the practical duties of life, and shall tend to render them self-supporting. The trades to be taught shall be such as the board of managers

and the superintendent shall deem the most suitable to the school conditions and the needs of the pupils."

In view of Section 9703, supra, the board and superintendent have chosen the barber trade to be taught in this school, and as stated by you is considered as one of the most important phases of the work carried on.

Your request requires a construction of Section 13529, Laws of Missouri, 1937, page 188, which section repealed the same section in Chapter 103, Article 1, R. S. Missouri, and reads as follows:

"Nothing in this chapter shall prohibit any person from serving as an apprentice in said trade under license issued by the board under a barber authorized to practice in the same, under this chapter, nor from serving as a student in any school or college for teaching said trade under the instruction of a qualified barber: Provided, that in no barber shop shall there be more than one apprentice to two barbers authorized under this chapter to practice said occupation; but all barber shops having but one chair shall be entitled to one apprentice; that all barber schools and colleges shall have not less than one teacher or instructor for every ten students: Provided, that all barbers, or barber schools or colleges, who shall take an apprentice or student, shall immediately file with said board the name and age of each of such apprentices or students, and the said board shall cause the same to be entered in a register kept for that purpose; for which registration a fee of five dollars

shall be paid to the treasurer of the board by such apprentice or student; provided, that any firm, corporation or person, desiring to conduct a barber school or college in this state, shall first secure from said board a permit to do so, and shall keep the same prominently displayed. For such permit there shall be paid to and collected by said board an annual fee of one hundred dollars to be paid on or before January 31st of each year; provided further, that said board shall have the right to pass upon the qualifications, appointments, and course of study in said college or barber shops where apprentices are taught the occupation of barbering, and provided further, that said board shall have the right and power to revoke the certificate, permit or license of any such barber school or college, instructor or teacher therein or instructor in any barber shop, for any violation of the provisions of this section."

One of the fundamental rules of statutory construction is to determine the legislative intent. We consider this rule so well established that it is unnecessary to cite authorities.

We especially call your attention to the following words found in Section 13529, supra:

"Provided that any firm, corporation or person desiring to conduct a barber college in this state, shall first secure from said board a permit to do so, \* \* \* \*"

None of the above underlined words include the Missouri School For the Deaf, since under Section 9688, supra, said School is an educational institution.

The general rule in regard to the application of general legislation to state and political subdivisions is best expressed in 59 C. J. 1103, and is as follows:

"The state and its agencies are not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless an intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication. This general doctrine applies with special force to statutes by which prerogatives, rights, titles, or interests of the state would be divested or diminished; or liabilities imposed upon it; but the state may have the benefit of general laws, and the general rule has been declared not to apply to statutes made for the public good, the advancement of religion and justice, and the prevention of injury and wrong."

Also in Morris v. State, 88 Okla. 189, we find the following:

"The presumption obtains that it is the legislative intent to exclude the state from the operation of a statute for the reason that the laws are ordinarily made for the government of citizens and not the state."

Therefore, evidently the General Assembly never intended that said school should be required to pay the one hundred dollar permit fee. Following that well established rule, "The Expression of One Thing is the Exclusion of Another", as stated in State ex rel. Kansas City Power and Light Company v. Smith, 111 S. W. (2d) 513, 1. c. 514:

"To uphold appellant in his contention would 'violate the well-known canon of statutory construction, viz, that the expression of one thing is the exclusion of another.' State ex inf. Conkling ex rel. Hendricks v. Sweaney, 270 Mo. 685, Loc. Cit. 692, 195 S. W. 714, 716."

Furthermore, while there is nothing to prohibit the Legislature requiring the Missouri School For the Deaf to take out this permit, it is unreasonable to think they would attempt to place the burden on the school when the said school is a state institution, and by such a requirement would be merely taking the money out of one pocket and placing it in another pocket. It is not likely the Legislature ever intended to do this, at least they did not specifically require this permit of the Missouri School for the Deaf. As stated in State ex rel. Missouri Portland Cement Company v. Smith, 90 S. W. (2d) 405, 1. c. 408:

"Undoubtedly it was within the power of the Legislature to make the tax applicable to the state and its agencies. But the theory underlying the presumption that property belonging to the state is not taxable; i.e., that such taxation would merely be taking money out of one pocket, and putting

it in another, seems to us to have peculiar application here, notwithstanding the general rule hereinabove noticed with respect to the extent of the principle of exemptions. It must be remembered that the involved tax is levied and collected solely by and for the benefit of the state and not by any municipality or other subdivision. The legislative journals show a purpose to devote the proceeds to specific purposes, namely, relief, old age pensions, care of the afflicted, and support of the public schools. It is an emergency measure, and expires by limitation on December 31, 1937. If chargeable to the state and its agencies of the kind in question, it would merely collect the amount thereof from itself, and then pay over to itself the amount so collected."

We now refer to the appropriation by the Sixtieth General Assembly for the present biennium for the operation of this institution. This will be found on pages 74-75, Laws of Missouri, 1939. There is no provision under this appropriation act whereby such a fee may be paid. Therefore, in the absence of such appropriation, the Missouri School for the Deaf under no circumstances could pay such a fee as required in Section 13529, supra. In view of the Legislature failing to make an appropriation for such a fee, knowing at the time that the Missouri School for the Deaf, under Section 9703, supra, is authorized to teach the barber trade and is so doing, it is our contention that the General Assembly never intended Section 13529, supra, requiring the payment of a one hundred dollar permit fee to teach the barber trade, should apply to the Missouri School for the Deaf.



Mr. Truman Ingle

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In view of Section 13529, supra, requiring any firm, corporation or person conducting a barber school to take out a one hundred dollar permit, does not include the Missouri School For the Deaf, apparently the Legislature only contemplated that this tax should be assessed against private institutions, and such a requirement is in no manner applicable to public institutions. Also, the Sixtieth General Assembly, by failing to appropriate funds for the payment of such a fee, never contemplated the Missouri School For The Deaf should be required to pay this one hundred dollars for a permit. Furthermore, to require the Missouri School for the Deaf to pay for such a permit would be taking the money out of one pocket and placing it in another.

Therefore, it is the opinion of this department that the Missouri School for the Deaf is not required to take out a one hundred dollar permit to instruct in the barber trade.

In answer to your second inquiry, we fail to find in the law a requirement for a minimum of two instructors. Section 13529, supra, only requires an instructor for every ten students, and the school now meets that requirement.

Respectfully submitted,

APPROVED:

W. J. BURKE  
(Acting) Attorney General

AUBREY R. HAMMETT, JR  
Assistant Attorney General

ARH:RV