

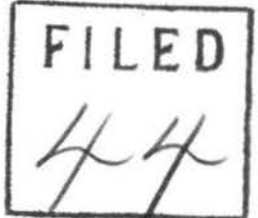
SCHOOLS:

DEAF AND DUMB SCHOOL:

Children under six years of age may not be admitted to the Missouri School for the Deaf.

August 16, 1943

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Hon. Truman L. Ingle
Superintendent, Missouri School
for the Deaf
Fulton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit the question of whether or not children under six years of age may be admitted to the Missouri School for the Deaf at Fulton, Missouri.

From a reading of Article 25 of Chapter 72, R. S. Mo. 1939, which relates to the Missouri School for the Deaf, and especially Section 10853, it would seem that there was no minimum age of limitation under the statutes for the admission of such children to that school. However, you have stated in your letter that public school monies have been appropriated to maintain this school. That being the case, we think you would have to look to the Constitution for your authority to receive children into that institution for training. Section 1 of Article XI reads as follows:

"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 between the ages of six and twenty years."

Section 6 of the same Article, from which a portion of the public school fund is derived, provides as follows:

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all

moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts, or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

Also, under Section 7 of the same Article, it is provided that at least 25 percent of the state revenue, exclusive of the interest and sinking fund, shall be applied annually to the support of public schools.

In the case of *Rogers v. McCraw, et al.*, 61 Mo. App. 407, the St. Louis Court of Appeals had before it the question of whether or not a person over six and under twenty-one years of age should be admitted to a public school. The court sustained a demurrer to the petition in that case because the school age was from six to twenty years. At l.c. 409 the court said:

"To entitle the plaintiff to maintain the action, she must have been within the school age (as fixed by the constitution) at the time she was prohibited from attending the school. Roach v. Board of Public Schools, 77 Mo. 484.

This is one of the essential facts of her alleged cause of action. Under the code every constitutive fact must be distinctly set forth in the petition; otherwise it is the subject of demurrer. The averment is that at the time the plaintiff was excluded from the school 'she was over six and under twenty-one years of age.' It is manifest that the petition failed to state a cause of action."

Also in the case of Roach v. Board of President and Directors of the St. Louis Public Schools, 77 Mo. 484, the court in speaking of the foregoing provision of the Constitution at l.c. 488 said:

"As to the second point, we think differently. The provisions of the 1st and 6th sections of article 11 of the constitution of the State, taken together, are conclusive on this point. The 1st section in effect declares that all persons in the state between the ages of six and twenty shall be gratuitously instructed in the free public schools therein provided for, and the 6th section in like manner declares that the 'public school fund,' therein mentioned, shall be faithfully appropriated for establishing and maintaining the 'free public schools' provided for in said article, and for no other uses or purposes whatsoever. The two sections, taken together, amount to both a requirement and a prohibition. By the first, free public schools for the gratuitous instruction of all persons in the State between the ages of six and twenty are required, but by the sixth, the funds thus dedicated to that use are prohibited from being expended for any other uses or purposes whatsoever. The expenditure by the defendant of its revenues for the purpose of admitting and instructing in said schools children under the age of six years, is a use of its funds not authorized, * * * * *"

Hon. Truman L. Ingle.

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Unless that institution is supported from funds other than the public school funds, it would seem that you would not be authorized to admit a child under six year of age for training.

CONCLUSION.

From the foregoing, it is the opinion of this Department that public school funds appropriated to the Missouri School for the Deaf may not be expended for the purpose of training children under six years of age.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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