

SCHOOLS: General Assembly may provide gratuitous instruction for persons under 6 years of age and also for persons over 20 years of age, and such would not violate the Constitution of Missouri.

December 15, 1936.

Honorable Lloyd W. King
State Superintendent
Department of Public Schools
Jefferson City, Missouri



Dear Mr. King:

This is to acknowledge your letter as follows:

"I shall appreciate having an official opinion on the following question:

"Under the Constitution of Missouri, may the General Assembly authorize boards of education to provide for gratuitous instruction for persons under six years of age and also for persons over twenty years of age?"

The Constitution of the State of Missouri does not grant power to the Legislature but is a limitation on legislative power so that the Legislature may enact any law not expressly or impliedly prohibited by the Constitution of Missouri or of the United States.

In *Ludlow-Saylor Wire Co. v. Wollbrinck*, 205 S. W. 196, the Supreme Court of Missouri, en banc, said the following concerning the Constitution of Missouri (page 197):

"The government of this state is a representative republic, in which all the power to make laws in the

name and with the authority of its constituent elements--its citizens en masse--is lodged in the temporary Legislature, subject only to the restraining clauses of the Constitutions of the state and nation. Upon this principle is founded the inherent power of that body to legislate at will on any subject and to any extent when, in so doing, neither the state nor the national Constitution is overridden." (Cases cited.)

Article XI, of the Constitution of Missouri relates to "education." Section 1 of said article 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."

The above constitutional provision makes it mandatory upon the General Assembly to establish and maintain free public schools for persons between the ages of six and twenty years. When the Legislature establishes schools for persons between six and twenty years of age it complies with the Constitution. However, the Legislature is not limited to establish schools for persons between six and twenty years but may provide schools for gratuitous instruction for persons under six years of age and also for persons over twenty years of age, owing to the fact that the Legislature is unlimited unless restrained by the Constitution. Section 1, Article XI does not restrain the Legislature to the establishment of schools for gratuitous instruction of only persons between six and twenty years of age, but makes it mandatory that at least gratuitous instruction be granted to persons between six and twenty years of age.

The Legislature has established public schools giving gratuitous instruction for persons between six and twenty years of age and in maintaining said schools biennially appropriates moneys from the State Treasury for their support. Section 6 of Article XI, Constitution of Missouri, provides in part as follows:

"The proceeds of all lands * * *;
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 for no other uses or purposes
whatsoever."

Section 7 of Article XI, of the Constitution of Missouri, provides in part as follows:

"* * * * the general Assembly may
provide * * * *; but in no case shall
there be set apart less than twenty-
five per cent of the State revenue,
exclusive of the interest and sinking
fund, to be applied annually to the
support of the public schools. "

In State ex rel. Cass v. Gordon, 266 Mo. 394, the Supreme Court of Missouri, en banc, construed the words "ordinary revenue" as found in Section 6, Article XI of the Constitution of Missouri, as follows (page 411):

"The regular and usual annual in-
come of the State, however derived,
which is subject to appropriation for
general public uses."

In the above case the court called attention to the fact that from 1877 till 1887 the Legislature appropriated

one-fourth of the ordinary state revenue paid into the treasury to the schools, and from 1887 until the present time one-third of the ordinary revenue has been given for the support of free public schools. The 58th General Assembly appropriated one-third of the ordinary state revenue for the support of the free public schools. Laws of Missouri, 1935, page 9. You will therefore note that the Legislature is not limited as to the amount it may appropriate, just so it is not less than twenty-five percent, owing to Section 7, Article XI of the Constitution.

Persons between the ages of five and six and over twenty years of age may at the present time receive gratuitous education just so long as the ordinary revenue, as described in Section 6, Article XI of the Constitution, is not used for the furtherance of such gratuitous education. Section 9213, R. S. Mo. 1929, provides in part as follows;

"The board of directors or board of education of any school district in this state may provide for the gratuitous education of persons between five and six and over twenty years of age, resident in such school district. * * * * *"

None of the ordinary revenue as described in Section 6 of Article XI of the Constitution, can be used for any purpose other than giving of gratuitous instruction for persons between the ages of six and twenty years.

In *Roach v. The Board of President and Directors of the St. Louis Public Schools*, 77 Mo. 484, the St. Louis Court of Appeals said (p. 488):

"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, but forbidden, by the constitution, * * * * *

It is to be noted that the General Assembly may establish gratuitous instruction for persons under six years of age and also for persons over twenty years of age, but the one-third revenue now dedicated to the use of gratuitous instruction of persons between six and twenty years of age could not be used for the purpose of giving gratuitous instruction to persons under six and over twenty years of age. Roach v. The Board of President and Directors of the St. Louis Public Schools, supra; Kayser v. Board of Education, 201 S. W. 531.

It is our opinion that the General Assembly may, under the Constitution of Missouri "authorize boards of education to provide for gratuitous instruction for persons under six years of age and also for persons over twenty years of age" just so long as Section 6, Article XI, of the Constitution

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is not violated, i. e., in reference to the one-third revenue set apart for the support of public schools.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

J. E. TAYLOR,
(Acting) Attorney-General

JLH:EG