SCHOOLS: A regulation passed by a school board stating that no child could enter the first grade unless he became six years of age prior to September 15th is not a denial of his legal right and is not unreasonable.

May 4, 1956

Honorable Charles W. Medley
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

The fact situation upon which you desire an official opinion is set forth in the letter from Mr. Bell to Mr. Hardy sent by you to us. That letter reads:

> "The Board of Education of R-VII passed a regulation a year ago which stated that no child could enter the first grade unless he became 6 years of age prior to November 15. It is the intention this year to move that to September 15. There has arisen some question as to the legality of such a regulation."

Section 163.010, RSMo, Cum. Supp. 1955, reads, in part, as follows:

> "The board of directors or board of education shall have power to make all needful rules and regulations for the organization, grading and government in their school district--said rules to take effect when a copy of the same duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. * * *"

This is indeed a broad grant of power and vests in the school boards a considerable amount of discretion in the operation of schools. In the case of State v. Robinson (Springfield Court of Appeals), 276 SW2d 235, at l.c. 240, the court stated:

> "Our courts have frequently announced and heartily approved the salutary and time-honored principle that school laws will be construed liberally to aid in effectuating their beneficent purpose, and that, since the administration of school matters usually rests in the hands of plain, honest and well-meaning citizens, not learned in the law, substantial rather than technical compliance with statutory provisions and requirements will suffice. State ex rel. Acom v. Hamlet, 363 Mo. 239, 250 S.W. 2d 495, 498(4); State ex rel. School Dist. No. 34, Lincoln County v. Begeman, supra, 2 S.W. 2d loc. cit. 111(3); School Dists. Nos. 18, 19, 29, 30, Webster County v. Yates, supra, 142 S.W. loc. cit. 794; School Dist. No. 58 of Pike County v. Chappel, supra, 135 S.W. loc. cit. 79; State ex rel. School Dist. No. 18 v. Sexton, supra, 132 S.W. loc. cit. 13. * * *"

However, such discretion is not without limitation, and the question here is whether or not the action contemplated is within such limitation.

We here note Section 164.010, RSMo 1949, which requires parents to send to school their normal children who are between the ages of seven and fourteen. Thus we see that parents cannot be compelled to send a child to school until it is seven years old. This, of course, does not necessarily mean that a school board can deny a child who is under seven admission to the school.

We here note Section 163.160, RSMo 1949, which reads:

> "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. Such gratuitous education, however, shall be provided only out of revenues derived by such school district from sources other than those described in section 3, article IX of the constitution of this state, and only with so much of such revenues as are not required for the establishing and maintaining of free public schools in such school districts for

> the gratuitous instruction of persons between the ages of six and twenty years; provided, that nothing in this section shall be construed as affecting the basis of apportionment of the public school fund of this state as now fixed by law."

Whether a school board will provide such schooling as is discussed above for persons between the ages of five and six and over twenty is clearly discretionary. The statement "for the gratuitous instruction of persons between the ages of six and twenty years" does indicate that the law intends that children who are six years of age shall be eligible for school attendance.

We also note Section 164.030, RSMo, Cum. Supp. 1955, which reads, in part:

> "1. The board of directors of each district shall, between the thirtieth day of April and the fifteenth day of May of each year take, or cause to be taken, and forwarded to the county superintendent of schools an enumeration of the names of all persons over six and under twenty years of age resident within the district, designating male and female, white and colored, and age of each, together with the full name of the parent or guardian of each child enumerated; and also an enumeration of all blind and deaf and dumb persons of school age resident within the school district, designating male and female, white and colored, and age of each, together with the full name of the parent or guardian of each child so enumerated, and their post office address, which said enumeration shall be subscribed and sworn to; and any parent or guardian who shall knowingly furnish any enumerator the name of any child who is under six or over twenty years of age, or who is a nonresident of the district, shall be guilty of a misdemeanor and any enumerator who shall knowingly return a false enumeration shall be guilty of a misdemeanor and punishable by fine, not to exceed one hundred dollars; * * *."

There is nothing in this section which could be said to make mandatory upon school boards the admission of children who are six years of age.

We here note that Section 1 of Article XI of the 1875 Missouri Constitution read 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."

This clearly gave children who were six years of age the right to attend school. However, the 1945 Missouri Constitution, in Section 1(a) of Article IX, which section takes the place of the former section, reads:

> "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 within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children, except in cases otherwise provided for by law."

This, it will be noted, puts a maximum age upon school attendance but not a minimum.

Thus, it appears that neither the Missouri Constitution nor the statutes have attempted to define exactly the age at which a child might attend school as a matter of right. In the absence of such constitutional or statutory provision, we must conclude that the matter has been left in the hands of the school district directors under Section 163.010, supra.

In regard to this, we direct attention to Section 2, Volume 56, C.J., page 807, which reads:

"The right or privilege to attend the public schools is derived from either the constitution or statute, and, in the absence of constitutional restrictions, is subject to such regulations, in respect to the admission and classification of pupils, as the legislature may from time to time see fit to make. Except in so far as expressly regulated by statute, the board or officers having control and supervision of the admission of pupils as a general rule have a discretionary power to establish reasonable rules and regulations for their admission, such as rules and regulations making a classification of pupils according to sex, or by which the assignment of children between schools affording equal advantages shall be determined, or requiring pupils to apply to such board or officers for orders for admission, or requiring graduates of parochial schools to take an examination for admission to the high school while admitting graduates of public schools without examination; and the exercise of such discretionary power will not be interfered with by the courts, except in cases of manifest abuse. Such rules and regulations, however, must be reasonable, otherwise they cannot be enforced. Thus a rule or regulation has been held unreasonable which excludes a pupil from admission for the purpose of taking other studies because of his failure to pass a satisfactory examination in one study, or which excludes him from admission entirely because he is married, or which imposes a matriculation charge as a condition to admission, or which prohibits children who have just arrived at a school age from entering the schools at any time except during the first month of the fall or spring terms. On the other hand a rule or regulation has been held proper which excludes children under the age of seven years unless they enter at the beginning of the fall term, or within four weeks thereafter, or unless they are qualified to enter classes existing at the time of their

> entry, or which excludes children temporarily from a school for want of room, notwithstanding there is a statutory provision making attendance at school for a certain number of weeks in the year compulsory."

In the absence of any statutory regulation on the question, we believe that a rule by a school board that a child is eligible for enrollment in the public schools only if he shall have attained the age of six years prior to September 15 could not be said to be an unreasonable exercise of the authority conferred upon the board of directors and would be valid.

CONCLUSION

Therefore, it is the opinion of this office that a board of education may by regulation provide that a child cannot be enrolled in the first grade unless he shall have attained the age of six years prior to September 15.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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