SCHOOLS:
EX POST FACTO LAWS:
CRIMINAL LAW:
CONSTITUTIONAL LAW :

Senate Bill No. 16 of the 69th General Assembly, which amends the compulsory attendance law, is not ex post facto and is applicable to those children who may have graduated from the eighth grade prior to August 29, 1957, but were under sixteen years of age at that date.

FILED
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November 4, 1957

Honorable W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Mr. Pinnell:

This is in response to your request for opinion dated September 23, 1957, which reads as follows:

> "Will you please advise me as to whether the new Compulsory Attendance Law, passed by the last session of the Legislature, applies to those students who have met the requirements specified under the previous Compulsory Attendance Law.
>
> "That is, may those students who have graduated from the eighth grade in April, May, or June, of 1957, be compelled to continue to attend school until they reach the age of sixteen years or by attending school through the eighth grade, as of April, May, or June, of 1957? Have they met the requirements of the law; and, therefore, the new and what is apparently additional requirements cannot be applied to them on the theory that the new law is a retroactive one as far as one applying to them is a new law and therefore cannot affect them?
>
> "It would appear to me that there might be some question about the enforcibility of the law with respect to those students who have met requirements of the law as of the date of their graduation in April, May, or June, of 1957."

The new compulsory attendance law, to which you refer, is Senate Bill No. 16 of the 69th General Assembly which became effective on August 29, 1957. That bill, which amends Section 164.010, RSMo, reads as follows:

> "Section 1. Section 164.010, RSMo 1949, is repealed and one new section enacted in lieu thereof, to be known as section 164.010, to read as follows:
>
> "164.010. Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and sixteen years shall cause the child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which the child attends is in session or shall provide the child at home with regular daily instructions during the usual school hours which shall, in the judgment of a court of competent jurisdiction, be at least substantially equivalent to the instruction given children of like age in the day schools in the locality in which the child resides; except that
>
> (1) A child who, to the satisfaction of the superintendent of schools of the district in which he resides or another person authorized to act for him, is determined to be mentally or physically incapacitated may be excused from attendance at school for the full time required, or any part thereof; or
>
> (2) A child between fourteen and sixteen years of age may be excused from attendance at school for the full time required, or any part thereof, by the superintendent of schools or other person authorized to act for him or by a court of competent jurisdiction when legal employment has been obtained by the child and found to be desirable, and after the parents or guardian of the child have been advised of the pending action."

Prior to the enactment of Senate Bill No. 16, supra, Section 164.010, RSMo, provided that a child between the ages of fourteen and sixteen might be excused temporarily from complying with the terms of that section if it be shown to the satisfaction of the attendance officer or a court of competent jurisdiction that such child had completed the common school course or its equivalent and had received a certificate of graduation therefrom.

In determining whether Senate Bill No. 16 is applicable to those children who had completed the common school course prior to the effective date thereof but who had not as yet reached the age of sixteen years, it must be borne in mind that proceedings for violation of the requirements of the compulsory attendance law are not against the child but against the parent, guardian or other person having charge, control or custody of such child. Under Section 164.060, RSMo 1949, the parent, guardian or other person having charge, control or custody of a child and who violates the attendance law is guilty of a misdemeanor.

Section 13 of Article I of the Constitution of Missouri, 1945, provides:

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

The distinction between ex post facto and retrospective laws was drawn in State ex rel. Jones v. Nolte, 350 Mo. 271, 165 SW2d 632, l.c. 638:

> " * * * As used in both the State and Federal Constitutions the term ex post facto law applies only to criminal legislation; that is, to laws which denounce as crimes acts which were innocent when committed or which change the penalties to be imposed for criminal violations after the date of the violation. The term retrospective law, however, in the State Constitution has a wider significance and the provision last cited is closely analogous to the obligation of contracts clause of §10, Art. I of the Constitution of the United States. Both of these provisions apply to laws which take away the vested rights of individuals

> after those rights have been acquired. McManus v. Park, 287 Mo. 109, 229 S.W. 211; Gibson v. Chicago, Great Western R. Co., 225 Mo. 473, 125 S.W. 453; Clark v. Kansas City, St. L. & C. R. Co., 219 Mo. 524, 118 S.W. 40. * * *"

Since the enforcement of the compulsory attendance law is by criminal process, Senate Bill No. 16 must be measured by the standards prescribed for determining whether a law is ex post facto.

Does Senate Bill No. 16 purport to denounce as a crime any act innocent when committed? Clearly it does not, but is prospective only in its operation. Merely because a person may have acquired a legal status under the existing law he has no vested right to continue that status if the law is changed making that same status illegal in the future.

An analogical situation is found in Samuels v. McCurdy, 45 S. Ct. 264, 267 U.S. 188, 69 L. Ed. 568, 37 L.R.A. 1378. There, the State of Georgia had enacted a statute prohibiting the possession of intoxicating beverages and provided for seizure and destruction thereof. The plaintiff had lawfully acquired certain liquors prior to the effective date of the law, but they were seized by the sheriff of the county. This was an action to recover the possession of the liquors. Among other contentions, it was alleged that the law under which liquor lawfully acquired could be seized and destroyed was an ex post facto law. The court, in disposing of this contention, said at U.S. l.c. 193:

> "This law is not an ex post facto law. It does not provide a punishment for a past offense. It does not fix a penalty for the owner for having become possessed of the liquor. The penalty it imposes is for continuing to possess the liquor after the enactment of the law. It is quite the same question as that presented in Chicago & Alton R.R. Co. v. Tranbarger, 238 U.S. 67. There a Missouri statute required railroads to construct water-outlets across their rights of way. The railroad company had constructed a solid embankment twelve years before the passage of the Act. The railroad was penalized for non-compliance with the statute. This Court said:

> 'The argument that in respect to its penalty feature the statute is invalid as an ex post facto law is sufficiently answered by pointing out that plaintiff in error is subjected to a penalty not because of the manner in which it originally constructed its railroad embankment, nor for anything else done or omitted before the passage of the act in 1907, but because after that time it maintained the embankment in a manner prohibited by that act.'"

Just as in the Samuels case it was the continued possession of the liquor after the effective date of the law prohibiting its possession which was the punishable offense, so in this case it is the failure of a parent, guardian, etc., to send a child to school after the effective date of Senate Bill No. 16 which is denounced as a crime.

CONCLUSION

Therefore, it is the opinion of this office that since Senate Bill No. 16 operates prospectively only, it is not ex post facto and is applicable to the parents, guardians or other persons having charge, custody or control of children who may have graduated from the eighth grade prior to August 29, 1957, but who had not on that date reached the age of sixteen years.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml