SCHOOLS:
MISSOURI SCHOOL FOR THE DEAF: Pupil cannot be excluded because he refuses to submit to medical treatment but can be excluded temporarily to prevent spread of contagious diseases.

November 21, 1944

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Board of Managers
Missouri School for the Deaf
Fulton, Missouri

Attention: Mr. Truman L. Ingle

Gentlemen:

We have your letter of recent date submitting to this department a situation which has arisen in your school and in connection with which you desire the opinion of this office. Your letter reads as follows:

"At the opening of the Fall semester, Mrs. Opal Willoughby returned her little son, Jerry, to school. When she registered him, she informed me that due to the fact that she is a Christian Scientist that no medicine was to be given to Jerry and that the only medical attention he should have would be dental care and the setting of a bone if broken. Mrs. Willoughby's request was that I telephone or telegraph her if Jerry should become ill. Upon receiving such information, Mrs. Willoughby informed me a Christian Science practitioner in her home town, Springfield, would assume the responsibility of his treatment according to Christian Science methods.

"Being unwilling to assume the responsibility for Jerry in case of illness, I told Mrs. Willoughby that I would upon written request from her, present the matter to our Board of Managers. Mrs. Willoughby informed me that under the law I could not deny her youngster the services of a Christian Science practi-

tioner and that we had no right to force on him the treatment of an M. D. I told Mrs. Willoughby that I knew of no such law and if there was one, I would like to see it. Upon her return home, Mrs. Willoughby evidently got in touch with certain people connected with the Christian Science Church of Missouri and forwarded to me the enclosed literature and letter, together with the letter from her which also is enclosed.

"This entire situation was presented to the Board of Managers at their regular meeting yesterday. After careful thought and consideration, the Board of Managers instructed me to write you, asking you for an opinion as to whether or not we must refrain from giving this child medical attention as requested by Mrs. Willoughby, if the child remains in school.

"The board further desires an opinion as to whether or not it has the authority, if your opinion in regard to medical care is that we must acquiese to Mrs. Willoughby's request, to remove the child from school and return him to his home.

"We will appreciate it very much if you will render the opinions as requested above by the Board of Managers of the Missouri School for the Deaf."

The statutes relating to the Missouri School for the Deaf are found in Article 25, Chapter 72, R. S. Missouri 1939, along with statutes relating to the Missouri School for the Blind. Section 10846 of said statutes provides as follows:

"The government of each of these schools shall be vested in a board of managers, composed of five members, appointed by the governor with the consent of the senate.* * * * * "

Section 10847, R. S. Missouri 1939, provides that:

> "The board of managers of each of said schools shall elect the superintendent and all teachers and officers of said school and prescribe the number to be employed therein, and fix their terms of office and the amount of compensation for their services. * * * * * * * * * * * * "

The foregoing powers and the other powers set forth in other statutes of said article show that the Board of Managers of the Missouri School for the Deaf stands as to that school in the same position as does a board of directors of a public school for other children. The courts have not had occasion to pass upon the powers of the Board of Managers of the Missouri School for the Deaf, but our courts have passed upon the powers of directors of general public schools. We think the rules applicable to school boards of ordinary public schools are determinative of the powers of the Board of Managers of the Missouri School for the Deaf. This, because the powers of said Board of Managers are generally similar to those of ordinary public school boards. Furthermore, by Section 1, Article XI, Constitution of Missouri, the General Assembly is required to "establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years." Deaf persons between the ages of six and twenty years are thus included in the educational program of the state. Furthermore, by Section 10853 of the statutes, all deaf persons under twenty-one years of age are given the right to attend the Missouri School for the Deaf. There is no reason to assume that because a pupil is deaf and, therefore, required to attend a special school, he should be dealt with or treated any differently as to his personal rights than the child who attended other public schools. For these reasons we shall look to the law as to the powers of school boards generally to control pupils in public schools to help determine what powers the Board of Managers of the Missouri School for the Deaf have in the same field.

I.

Can the board of directors or managers of a public school compel a child to submit to medical treatment?

In the recent case of Harfst v. Hoegen, 163 S. W. 2d 609, the Supreme Court of Missouri had before it the

question of the right of a school board to use public funds to support a school in which certain religious practices were indulged in and certain religious teachings were given to the pupils. The court went into the question of the guarantee of religious freedom, and in the course of the opinion, l. c. 513, the court said:

> "* * * By the common law, control of children is parental and the father could 'delegate part of his parental authority to the tutor or schoolmaster,' said Blackstone, 1 Com. 452, 3. Now by statute the school board has been given certain powers, and it behooves the board to point to a statute, when its will and that of the parent conflict. * * * * * * * * * * "

Also, in the case of Wright v. Board of Education, 295 Mo. 466, 474, the court said:

> "* * It is therefore within the purview of legislative power to enact any laws not in violation of individual rights, defining the power and duty of boards of education and enacting such laws as the General-Assembly may deem proper for the control and management of the schools. The Legislature, however, in its wisdom, contrary to the course pursued in some other jurisdictions, has deemed it proper to prescribe only in the most general terms the powers to be exercised by such boards, and the regulations for the control of the schools and those attending same."

In the case you submit, the will of the Board of Managers conflicts with that of the parent of the pupil. Is there a statute to which the Board of Managers can point to support its position?

We find no specific statute authorizing the Board of Managers of the Missouri School for the Deaf nor the Board of Directors of any public school to require pupils to submit to medical treatment. Unless, therefore, there are some general statutes which grant such boards that power, the power does not exist.

There are numerous general statutes with respect to the powers of directors of public schools. For instance, Section 10340, R. S. Missouri 1939, reads as follows:

> "The board 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. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same, except as provided for in Section 10458, R. S. 1939: * * * * * * * * * * * * * * * "

It might be suggested that the foregoing statute, which authorizes the board to make all needful rules and regulations for the government of the school, is broad enough to authorize a rule or regulation requiring a pupil to submit to medical treatment when in the judgment of the board the child needs such treatment.

The case of Wright v. Board of Education, supra, discusses the effect of such general statutes. In that case, l. c. 475, the court said:

> "* * * In addition, a general statute affords more opportunity for such an interpretation as will result in denying to no pupil any of the advantages to be derived from the system, unless there exists cogent reasons therefor.
>
> "What constitutes such reasons may, as a general rule, be left, on account of the general character of the statute,

to the discretion of the board. * *"

The question in that case was whether the directors had exceeded their discretion in making a certain rule, and the court held that the directors had exceeded such discretion. In that case the court was considering a general statute similar to Section 10340, supra, in connection with a rule of a school board denying to pupils who belong to certain secret organizations the privilege of participating in graduating exercises and honors. In discussing the rule of the board the court said, l. c. 478:

> "There is nothing shown as to the conduct of the pupils alleged to be within the purview of the rule to support the conclusion that their membership in the societies designated has proved detrimental to the operation and control of the school. In the absence of such evidence the reason for the rule, so far as this case is concerned, ceases to exist."

It will be seen by the foregoing that the court held that unless the thing ruled against was something which was detrimental to the operation and control of the school, the rule could not be justified. The court then discussed numerous cases where the courts had ruled upon the extent of the power of school boards to control the pupils of the school, and concluded as follows, l. c. 482:

> "The lack of power of the board to adopt the rule in question, having been demonstrated, a discussion of its discretion is rendered unnecessary. Either by reasonable implication or direct expression, the limits of that discretion may be readily determined from what has heretofore been said. It will suffice, therefore, to say it should extend no further than may be found reasonably necessary to promote the intelligent conduct and control of the school, as such, within the domain we have defined. Any other interpretation would remove all limit to the exercise of discretionary power, leaving it to the judgment, whim or caprice of each succeeding board. We have not reached that point in the interpretation of a delegated power where,

> with a proper regard for the rights of citizens and the rules of construction, we feel authorized in holding, as was held in Wayland v. Board, supra, that the board's power is to be limited only by its discretion free from any determination by the courts."

From the above we conclude that the power of the board of directors of a public school to make rules as to the government of the school and the pupils attending it extends "no further than may be found reasonably necessary to promote the intelligent conduct and control of the school." Our question, therefore, resolves itself to a question of whether to allow a pupil to refuse medical treatment would tend to interfere with the intelligent conduct of the school. That is to say, if a pupil gets sick and his parents refuse to allow him medical attention, is the conduct and operation of the school interfered with? Perhaps the child might die, but would that interfere with the conduct and operation of the school? In other words, would the school go on in a normal manner regardless of how much the child suffered or even if the child died?

We think that the discretion of a school board does not extend to controlling the personal treatment of pupils in case of illness. The sickness of a child in school would be endured outside the schoolroom and hence could not interfere with the conduct of the school. In fact, the parent involved in your present case has given permission that her child may be taken to the hospital if he becomes ill. He would thus be removed from the schoolroom and what kind of treatment he received for his ills at the hospital could not interfere with the conduct of the school.

We think our conclusion will be further supported by reference to statutes which give specific authority with respect to the personal health and well being of school children. Section 9738 of the statutes creates the division of Child Hygiene in the State Board of Health and specifically authorizes such division to supervise and regulate the physical inspection of school children in the public schools of the state, but said statute contains the following limitation upon such power:

> "* * * Provided, that no private examination or treatment of any school child shall be made except after notice to, and by consent of, the parent or guardian of such child."

Also, Section 10521 of the statutes provides for a supervisor of physical education in certain schools and authorizes him to assist in the physical examination of the pupils. Said section requires said supervisor to "report the findings of the physical examination of any child to its parent or guardian and may make such recommendations to promote the correction of defects or the amelioration of impairments as is deemed necessary. * * " Said provision clearly shows that the power of such supervisor is limited to examining pupils and reporting the condition to the proper parent or guardian with recommendations. Said section further authorizes school boards in certain schools to "employ, or otherwise provide or secure the service of, a supervisor of health and of one or more school nurses, * *" who shall serve under the supervisor of physical education if so delegated by the superintendent in charge. After granting the foregoing powers as to physical examination, said section provides as follows:

> "* * * It is provided that this article shall not be construed to require any school child to undergo private examination or medical treatment recommended by the supervisor of physical education, or health supervisor, or by any other person who may have conducted the physical examination of the school child, without the consent of its parent or guardian."

The foregoing statutes clearly show that the Legislature does not intend to require school pupils to submit to medical treatment without the consent of their parents. If the Legislature would not allow compulsory medical treatment of school children when dealing specifically with the question of their health by special statutes, it certainly could not be contended the Legislature, by a general statute dealing with the general powers of a school board, intended to permit such boards to require a pupil to submit to medical treatment.

CONCLUSION

It is, therefore, the opinion of this department that the Board of Managers of the Missouri School for the Deaf cannot require a pupil to submit to medical treatment in the absence of the consent of the parent or guardian of such pupil.

II.

Can the Board of Managers of the Missouri School for the Deaf expel a pupil and return him to his home because his parent will not consent that in case the pupil becomes ill the school authorities can cause medical treatment to be administered to him?

From what we have said above, we think it is evident that you cannot deny a pupil the right to attend the school because you cannot procure permission of his parent for the school authorities to cause medical treatment to be administered to such pupil in case he becomes sick. Since the Board of Managers, as pointed out above, has not the power to compel the pupil to submit to medical treatment, it must follow that such board cannot refuse to allow the pupil to attend the school because he will not in advance agree to submit to a rule which the Board has no authority to make. Section 10855, supra, provides that all deaf persons under twenty-one years of age who are residents of the state and who have suitable mental and physical capacity shall be entitled to attend a school for the deaf. Evidently the pupil involved in your present case has all of these qualifications.

It should be pointed out perhaps that there are cases in which a pupil may be excluded from school temporarily because of a contagious disease. In the case of ordinary public schools, Section 10341 of the Statutes specifically authorizes school boards to exclude from school a pupil who has a contagious disease so long as there is any liability of such disease being transmitted by such child to other children. It will be noted, however, that such section does not authorize the school board to cause medical treatment to be administered to the pupil, but it merely authorizes the board to keep the child out of school until such time as the danger of his infecting other children has passed. There is no statute giving such specific power to the Board of Managers of the Missouri School for the Deaf. However, we think such Board has that power under the general powers granted to it as set out in the first part of this opinion. The government of this school is vested in the Board of Managers. Such a general grant of powers, as was shown in the first part of this opinion, includes the power to do whatever is reasonably necessary to prevent interference with the conduct of the school. To allow pupils to attend who have contagious diseases would certainly scatter the disease to other pupils and thus interrupt the conduct of the school. It would, there-

fore, be necessary to prevent such pupil from attending school until the danger of transmitting the disease had passed in order to keep the school going on any intelligent basis.

In the case of State ex rel. v. Cole, 220 Mo. 697, the court had before it a rule of a school board which excluded pupils who had not been vaccinated against smallpox. The authority for the board making such a rule was claimed under general statutes vesting in the Board the government of the school and giving the power to make needful rules and regulations for the government of the school. In passing on the validity of the rule, the court said, l. c. 706:

> "By section 9759, supra, the government and control of the district is vested in the board of directors. We have here a broad and general grant, as do we also in section 9764, supra. We have no doubt that in the event of a threatened epidemic of smallpox such boards can pass a rule excluding all pupils who have not been vaccinated. That a person who has never been vaccinated is subject to the contagion of smallpox is general knowledge. That vaccination has reduced the ravages of this disease is also general knowledge. That the appearance of unvaccinated pupils in a public school at a time of a smallpox epidemic, would tend to break up and disorganize a public school, is unquestioned. That the school board has the power to absolutely suspend the school during epidemics of contagious or infectious diseases, we think can hardly be questioned. No court would compel the opening of a school under such circumstances. The power here exercised was a very similar power, and if these rules are reasonable, we see no reason why their enforcement should be prohibited."

After discussing numerous decisions from other states the court then said, l. c. 716:

> "We are of the opinion that the school boards of Missouri have the right to enact and enforce rules of the character here in question at all times whenever there is either a smallpox epidemic in the district, or whenever there is a threatened smallpox epidemic.
>
> "The very purpose of such regulations might be thwarted were we to actually await the epidemic itself."

We think the reasoning of the court in the above case, when applied to the general statutes relating to the powers of the Board of Managers of the Missouri School for the Deaf, would lead to the conclusion that such Board would have power to exclude pupils who have contagious diseases until the danger of transmitting same to the other pupils has passed, and, under proper circumstances to exclude pupils who refuse to be vaccinated against contagious diseases. When the circumstances under which refusal to be vaccinated would warrant the exclusion of pupils and for how long such exclusion could be enforced would have to be determined by the facts and circumstances in each particular case.

CONCLUSION

It is, therefore, the opinion of this department that the Board of Managers of the Missouri School for the Deaf cannot exclude a pupil and return him to his home because his parent will not agree that such pupil shall receive medical treatment in case he becomes ill from sickness or disease. This conclusion does not mean that such Board cannot exclude a child temporarily because he has a contagious disease or is threatened with a contagious disease under circumstances which would make him a threat to the health of other pupils.

Respectfully submitted

HARRY H. KAY
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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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