

SCHOOLS: Two districts are authorized to make a temporary combination of one building for negro children; State Superintendent may make apportionment of state moneys for the temporary combination.

August 11, 1941

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



Dear Sir:

You recently wrote this department concerning the question of combining two school districts with reference to negroes. In the first instance, you set forth the specific problems as follows:

- "1. The temporary combination of a school district for the establishment of a colored elementary school and at the same time permit the white school in each district included in the combination to be maintained without combination.
2. The apportionment of state school money on account of the temporary combination of two or more districts for the establishment of a colored school."

Your first question is:

"Is it legal for two or more school districts to provide a temporary combination under the provisions of Section 10457, R. S. Mo., 1939, for the establishment of a colored elementary school and at the same time permit the white schools in each district included in the combination to be maintained without combination?"

Section 10457 refers to the temporary combination for educational purposes of two or more school districts, but, we think, refers solely to the combination of districts which are attended by white children. Said section is as follows:

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"Two or more districts may combine temporarily for educational purposes should the school boards of all districts concerned agree to transport the pupils of one or more districts to a schoolhouse elsewhere, and such districts shall receive the same apportionment from the state school fund as they would otherwise have received, and may use such funds, or any part thereof, in transporting pupils: Provided further, that in such temporary combinations the record of daily attendance of pupils from each district shall be kept separate, and credited to their respective districts, as a basis for future apportionments."

We have considered the recent decision of State ex rel. v. Canada, 305 U. S. 337, in which the Supreme Court of the State of Missouri was reversed with reference to its holding on the entrance of a negro law student to the University of Missouri. We do not think this decision has much bearing on the question which you present other than the fact that negro children do not have the privilege of attending the same school, but do have the privilege of attending and having schools of equal opportunity maintained for them.

We must be guided by our statutes with reference to negro children. Section 10350, R.S. Mo. 1939, authorizes the board of directors to establish a school for colored children under certain conditions, or, in lieu thereof, may pay the transportation and tuition charges of such colored children to any district in the county wherein a school is maintained for colored children. There is a further provision in said Section 10350 to the effect that if there is no school building in a school district for colored children, the board of directors is authorized to rent suitable buildings. There is a further provision that the boards of directors of two or more districts may establish a joint colored school, the expense of which is to be borne by each district in proportion to the number of school children enumerated in each.

By the provisions of Section 10456, R. S. Mo. 1939, teaching units are to be determined for each and every district on the basis of the average daily attendance in such district during the preceding year, and any district maintaining a school for both white and colored children is entitled

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to receive aid for both, and the schools are considered separately in allowing the teaching units.

In view of the fact that the statutes plainly provide that each district is to be treated separately and both are to receive aid, and the fact that Section 10350 appears to be liberal with reference to the establishment, that is, the buildings, in the case of colored schools, and by the provisions of Section 10457, permitting the temporary combination of schools, we are of the opinion that it is legal for two or more colored schools to be provided with a temporary combination insofar as buildings are concerned.

II.

"Is it legal to make apportionment of state school money under the provisions of the law for a temporary combination as indicated in Section 10457, R. S. Mo., 1939, when such combination is for colored school purposes only?"

In view of our answer to your first question and the reasons therein stated, we think that it is legal to make apportionment of state school moneys for the temporary combination under the provisions of Section 10350, R. S. Mo. 1939, even though such combination is for colored schools only.

Respectfully submitted,

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APPROVED:

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