

MAGISTRATE COURTS: County superintendent of schools as school attendance officer may file complaint in
SCHOOLS: magistrate court to enforce compulsory school attendance of children; magistrate court has jurisdiction to hear such cases arising out of prosecution for failure to comply with school attendance law.

March 3, 1950

OPINION NO. 7

Honorable Joe Berry
Judge of the Probate and
Magistrate Courts
Benton County
Warsaw, Missouri



Dear Sir:

Your letter at hand requesting to be advised by this department, which reads as follows:

"Does the Magistrate Judge have proper jurisdiction over compulsory attendance according to the Missouri school law?

"May a County Supt., as a compulsory attendance officer, file a complaint in the Magistrate Court against the parents or guardians of a person not in regular attendance at school?"

Regarding the compulsory attendance of children in school, Section 10587, R.S. Mo. 1939, in part, provides:

"Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and fourteen years shall cause such child to attend regularly some day school, public, private, parochial or parish, not less than the entire time the school which said child attends is in session, or shall provide such child at home with such regular daily instruction during the usual hours as shall, in the judgment of a court of competent jurisdiction, be substantially equivalent at least to the instruction given the children of like age at said day school in the locality in which said child resides; and every parent or person in this

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state having charge, control or custody of a child between the ages of fourteen and sixteen years, who is not actually and regularly and lawfully engaged for at least six hours each day in some useful employment or service, shall cause said child to attend regularly some day school as aforesaid: * * *

Section 10589, R. S. Mo. 1939, provides that the county superintendent of schools in each county shall act as school attendance officer and shall have the power of a deputy sheriff in the performance of the duties of school attendance officer in all school districts of the county. Provision is also made for the appointment of other school attendance officers.

Section 10591, R.S. Mo. 1939, provides for the county attendance officer acting as a prosecuting officer, and, in part, reads:

* * * The county superintendent shall immediately have an investigation made by his county school attendance officer, and any parent or guardian or person who, having charge, control or custody of any child between the ages of seven and sixteen years, violates any provision of sections 10587 to 10594, shall be warned by said officer as soon as possible after the beginning of the public school term of the district in which such child resides and also at any time thereafter to place and keep said child in regular attendance at some day school within three days from the service of said written or printed notice, after the lapse of three days from the date of the service of said notice of warning, said parent or guardian or person having charge, control or custody of any such child shall be deemed guilty of a misdemeanor, and said school attendance officer shall make complaint against said parent, guardian or other person in charge of such child before the judge of the juvenile division of the circuit court or before a justice of the peace in the county where the party resides for refusal or neglect to send such child or children to school; said judge or justice shall issue

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a warrant upon said complaint, returnable forthwith, and upon the appearance of the defendant, shall proceed to hear and determine the same in the same manner as is provided by the statutes for other cases under his jurisdiction, and upon conviction of violation of the aforesaid sections said parent, guardian or other person having control or custody of such child shall pay a fine of not less than ten dollars and not more than twenty-five dollars, or to be imprisoned for not less than two days and not more than ten days, or by both such fine and imprisonment: Provided, that said sentence of fine or imprisonment, or both, may be suspended and finally remitted by the court, with or without the payment of costs, at the discretion of the court, if the said child be immediately placed and kept in regular attendance in some day school as aforesaid, and if such fact of regular attendance is proven subsequently to the satisfaction of said court by a properly attested certificate of attendance by the superintendent, principal or person in charge of said day school."

The above section clearly provides that the county attendance officer after giving due warning and notice to parents, guardians or persons having custody of children between the ages of seven and sixteen years who violate the provisions of Section 10587, supra, shall make complaint against said parent, guardian or other person in charge of said children before the judge of the juvenile division of the circuit court or before a justice of the peace in the county where the party or parties reside.

Relating to prosecutions for violations of the provisions of Section 10587, supra, Section 10595, R.S. Mo. 1939, provides as follows:

"Prosecutions under sections 10587 to 10594 shall be brought in the name of the state of Missouri. The circuit court shall have concurrent jurisdiction with the court having general jurisdiction over misdemeanors to try and determine any cases of violation of the provisions of said sections and shall also

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have jurisdiction to determine exemptions under section 10588 and a general supervisory jurisdiction over the enforcement of the provisions of said sections."

We note that Section 10591, supra, confers jurisdiction on the justice of the peace to proceed, hear and determine cases against the parent, guardian or other person having control or custody of a child between the ages of seven and sixteen who is charged with violating the provisions of Section 10587, supra. We believe that this would also confer jurisdiction upon the magistrate courts, for Section 20, Article V of the Constitution of 1945, provides as follows:

"Until otherwise provided by law consistent with this Constitution, the practice, procedure, administration and jurisdiction of magistrate courts, and appeals therefrom, shall be as now provided by law for justices of the peace; and in counties of less than seventy thousand inhabitants magistrate courts shall have concurrent juvenile jurisdiction with the circuit court, and the powers of the circuit judge in chambers when the circuit judge is absent from the county."

The above constitutional provision also confers upon magistrate courts concurrent juvenile jurisdiction with the circuit court in counties of less than 70,000 inhabitants, as well as providing that the jurisdiction of magistrate courts shall be as now provided by law for justices of the peace.

Section 10595, supra, relating to prosecutions and conferring jurisdiction, lodges jurisdiction in the circuit court and in courts having general jurisdiction over misdemeanors.

Section 3856.1, Mo. R.S.A., relating to the jurisdiction of magistrate courts, provides that "Magistrates shall have concurrent original jurisdiction with the circuit court, coextensive with their respective counties in all cases of misdemeanor." Consequently, prosecutions for violations under Section 10587, supra, could be brought in the magistrate court, and the magistrate court would have jurisdiction to hear, try and determine such cases.

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CONCLUSION

It is, therefore, the opinion of this office that the county superintendent of schools as the school attendance officer may file complaints in the magistrate court against the parents, guardians or other persons having custody of children between the ages of seven and sixteen years for failure to cause said children to be in regular attendance at some day school, as provided by law. It is further the opinion of this department that the magistrate court has jurisdiction over cases arising out of prosecution of said parents, guardians or other persons having custody of such children.

Respectfully submitted,

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APPROVED:

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