

SCHOOLS: (1) A pupil between the ages of seven and sixteen enrolled in a nonpublic school may also attend courses on a part-time basis in a public technical-vocational school so long as the attendance at the public school is in addition to attendance for the six-hour school day at the nonpublic school. Such part-time attendance would be subject to reasonable rules and regulations on the part of the public school district. (2) The Compulsory School Attendance Law, Section 167.031, RSMo 1969, as interpreted by the Missouri Supreme Court in the Wheeler decision, does not require that a pupil attend one school for six consecutive hours each day provided that a total of six hours each day is spent in attendance at one school.

OPINION NO. 144

November 26, 1971



Honorable Ray S. James  
State Representative  
Fifth District  
6421 Brookside Road  
Kansas City, Missouri 64113

Dear Representative James:

This official opinion is issued in response to your request for a ruling on the following questions:

"I request your official opinion on the meaning of Section 163.031 RSMo., 1969."

\* \* \*

"I request your official opinion on the question of whether or not a child enrolled in a nonpublic school may also attend courses on a part-time basis in a public technical-vocational school so long as the attendance of the public school is in addition to attending at least six hours in his nonpublic school.

"Also, I would appreciate your ruling as to whether or not the requirement to attend one school at least six hours requires the pupil to attend school for six consecutive hours, or may the six hours be divided by another intervening activity, such as, attending a different school."

As background for this opinion request, you furnished us the following information:

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"We are developing in Kansas City a central technical and vocational school. The school is operated by the public school district. A plan is being studied whereby pupils enrolled in nonpublic schools may also take advantage of the central technical-vocational school. We are aware that the Missouri Supreme Court in the case of Special District v. Wheeler ruled that the Compulsory Attendance Law required children to attend one school at least six hours each school day. However, it is further my understanding that the court affirmed a program where nonpublic school pupils attended public school classes in addition to attending six hours at their nonpublic school.

"I am interested in determining the application of Missouri law to situations, for example, where a nonpublic school pupil would attend a public technical-vocational school for one hour in the morning and then attend a nonpublic school for an additional six hours, or would attend a nonpublic school for six hours and then come to the public technical-vocational school for an additional hour. Another example would be where a nonpublic school child would attend his nonpublic school for two hours, come to the public technical-vocational school for an hour or two and then return to his nonpublic school for four additional hours or any other combination of hours so long as a total of six were spent in one of the schools attended."

We are enclosing herewith a copy of Opinion No. 133, dated October 28, 1971 which we believe answers your first question. Also, the Cole County Circuit Court's opinion in Special District for the Education and Training of Handicapped Children of St. Louis County v. Wheeler, which is discussed below with regard to question 2, supports our conclusion that a nonpublic school pupil between the ages of 7 and 16 may attend a public vocational school on a part-time basis so long as it is in addition to six hours spent in attendance at the pupil's regular school.

Your second question is whether, under Section 167.031, RSMo 1969, as interpreted by the Missouri Supreme Court in Special

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District for the Education and Training of Handicapped Children of St. Louis County v. Wheeler, 408 S.W.2d 60 (Mo., en banc, 1966), a pupil is required to attend one school for six consecutive hours or whether the six-hour school day may be interrupted by a pupil's attendance at a second school. We believe that the Wheeler decision stands only for the proposition that a student must attend one school for the regular six-hour school day. In Wheeler, the Court declared unlawful a program conducted by the Special District in which it provided speech therapy for parochial school children in buildings maintained by the Special District. "Parochial school children who desire to receive such therapy were released from the parochial schools for part of their regular six-hour day." (Emphasis supplied.)

The Court ruled that such a program was invalid because the Compulsory School Attendance Law required a child to attend one school for the entire six hour day.

"The parties stipulated that '\* \* parochial school children are released from their regular schools for part of their regular six-hour school day so that they may attend speech correction classes in buildings maintained by the Plaintiff District.' By statute it is mandatory that each child 'attend regularly some day school.' We are asked to change the statutory requirement to read 'some day schools' or to read 'some day school or schools.' We cannot do this. We find no ambiguity which would permit us to judicially ascertain the legislative intent. We must apply the statute as written. . . ." Id. at 63.

Therefore, under Wheeler, a student cannot attend school No. 1 for five hours and school No. 2 for one hour and satisfy the requirements of the Compulsory School Attendance Law. However, at no place in the Wheeler opinion does the Court hold that a student must attend school No. 1 for six consecutive hours. Neither the wording of the Compulsory School Attendance Law, Section 167.031, RSMo 1969, nor the definition of a school day in Section 160.041, RSMo 1969, nor any other statute require that a student attend one school for six consecutive hours to satisfy the Compulsory School Attendance Law.

Support for this conclusion is found in the Order of the Cole County Circuit Court in the Wheeler case, dated October 12, 1965, as amended on November 19, 1965. By a supplement to the agreed upon facts in that case, the Special District's program for the 1965-1966 school year was summarized as follows:

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"Beginning in September, 1965, and continuing up through the date of filing this Second Supplemental Agreed Statement of Facts, plaintiff District has offered speech correction services to parochial school children requiring the same in three of its own buildings. Plaintiff is informed that said parochial school children attend their respective parochial schools for at least six hours each school day and that the time said parochial school children attend speech correction classes in buildings maintained by the plaintiff District is in addition to the time spent in their parochial schools. (Appellant's Transcript on Appeal, pp. 78-79.)

The Circuit Court found nothing unlawful in this program:

"6. The practice of plaintiff, which commenced in September, 1965, of offering its service to school children enrolled in parochial schools of the County of St. Louis, State of Missouri, in buildings maintained by plaintiff is not in violation of Section 167.031 if said parochial school children attend their respective parochial schools for at least six hours each school day and that the time said parochial school children attend speech correction classes in buildings maintained by the plaintiff District is in addition to the time spent in their parochial schools."

This portion of the Court's Order was not appealed to the Missouri Supreme Court. See Special District v. Wheeler, 408 S.W.2d at 62.

#### CONCLUSION

Therefore, it is the conclusion of this office that:

(1) A pupil between the ages of seven and sixteen enrolled in a nonpublic school may also attend courses on a part-time basis in a public technical-vocational school so long as the attendance at the public school is in addition to attendance for the six-hour school day at the nonpublic school. Such part-time attendance would be subject to reasonable rules and regulations on the part of the public school district.

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(2) The Compulsory School Attendance Law, Section 167.031, RSMo 1969, as interpreted by the Missouri Supreme Court in the Wheeler decision, does not require that a pupil attend one school for six consecutive hours each day provided that a total of six hours each day is spent in attendance at one school.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General

Enclosure

Opinion No. 133, October 28, 1971, Jasper