

SCHOOLS:

State Superintendent of Schools has a right to withhold equalization quota funds from districts which do not employ teacher having 60 hours college credit.

April 19, 1940

Honorable C. R. Hayes
Prosecuting Attorney
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Dear Mr. Hayes:

This Department is in receipt of your letter of March 6th wherein you refer to the fact that you had previously written us several months ago concerning a question relating to the school laws. Your original letter was evidently lost as we appear to have no record of the same. The copy of your original letter is as follows:

"I would like to have an opinion on the following: Under section 9270-v of the 1931 school law, the State Superintendent of Schools of Missouri ruled that a teacher must have sixty hours college credits before they will release the money (Equalization Quota) for the same. These districts have qualified under section 9270-n and 9270-o of the 1931 school law, which superseded the section 9257. The State Superintendent of Schools has placed these under section 9257 and has given the teacher and attendance quota. They have been refused the money because they did not employ a teacher of 60 college hours credit."

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At the outset there is no specific statute by which the State Superintendent of Schools requires or demands that a teacher have sixty college hours credit before releasing the funds under Section 20, Laws of Missouri 1931, page 346, which is designated as Section 9270v in the Missouri School Laws as prepared by Superintendent King, and likewise Sections 13 and 14, page 342, Laws of Missouri, 1931, and designated as Sections 9270-n and 9270-o.

A question similar to the one which you present is discussed in the case of Benton v. Windyville Consolidated School District, 85 Mo. Ap., l. c. 91, and will be referred to later in this opinion. Many of the statutes to which we will refer are contained in that opinion, among them being Section 9444, R. S. Mo. 1929, providing in part that the State Superintendent of Schools shall exercise supervision of educational funds and secure the safety and correct application of such funds, and shall require information from school districts about the funds and conditions of schools and the management thereof.

Section 9446, R. S. Mo. 1929, refers to the fact that the Superintendent is required to inspect schools and make suggestions for improving the school in the care and upkeep and the government of same, and in every respect to elevate the standard and efficiency of the instruction. Section 9447, R. S. Mo. 1929, authorizes the State Superintendent of Schools to inspect and classify all public high schools in which certain standards are mandatory.

Section 20, Laws of Missouri 1931, page 346, provides that if the average daily attendance of any district shall be less than fifteen pupils, the State Superintendent shall in lieu of such state aid, after investigation that convinces him that it would be to the best interests of all concerned, to require the board to provide for transportation of the pupils of such district to other schools

etc. It is our contention that the expression in Section 20, "to the best interests of all concerned," includes various elements by which the State Superintendent is vested with discretionary power in the matter. Among these elements is not only the question of the qualifications of the teacher as to possessing sixty hours of college credit, but such others as: (a) Working toward the realization of the standards of a first-class school; (b) Providing local funds to furnish needed repairs, replacements, and equipment; (c) Showing evidence of a willingness to support not only financially but cooperatively in other ways a sound educational program; (d) Providing a well qualified teacher; and (e) Considering the per-pupil cost and accessibility to other schools.

It has been the policy of the Department of Education that when there is cooperation between the State Superintendent and the various school boards, in that the boards are willing to meet the standards and recommendations for schools, and even though the attendance be numerically low, that the school is often permitted to be maintained by the Superintendent and the regular equalization quota state apportionment is granted as provided by law. But when the State Superintendent of Schools, in his discretion, is convinced that the proper school facilities will not be offered for maintaining the school in the district, that the per pupil cost is excessive, and that other satisfactory schools are accessible, he then determines that it is to the best interest of all concerned that the school be closed and the pupils transported to other schools outside the district.

Therefore, when school boards fail or refuse to cooperate or comply with the requirements, we think it is purely within the discretion of the State Superintendent of Schools to deny the equalization aid to the district. Assuming, for the sake of argument, that under Section 20 the State Superintendent exercises his discretion in the matter

and for the best interests of all concerned decides that the pupils shall be transported to an adjoining or other schools and the board in turn refuses when called upon to do so, to transport the pupils, then it is our opinion that he may deny such district state aid.

Referring to the Benton v. Windyville Consolidated School District decision, mentioned above, we quote in part the court's decision (l. c. 91):

"Article Eleven (11) Chapter 57, Revised Statutes 1929, relating to the election, duties and term of office of the State Superintendent of Public Schools, provide among other things that he shall exercise supervision over the educational funds of the State, cause to be published as many copies of the law relating to schools with instructions for carrying them into execution as often as any change in such laws may be made, if in the opinion of the Superintendent it be of sufficient importance, and to in every way elevate the standard and efficiency of the instruction given in public schools and in connection with the other duties of the state superintendent, Section 9447 of said Article Eleven of Chapter (57), provides distinctly for the classification and accrediting of public schools by the state superintendent, and by the provisions of Section 9448, Revised Statutes 1929, the superintendent may drop any school from its classification, if he finds that such school does not maintain the required standard of excellence.

"Article Four (4), Chapter (57) of the 1929 Statutes of Missouri, relating to city, town and consolidated schools, their organization, duties of their officers and boards by Section (9345) of said Article (4) especially provides for the consolidation of three or more common school districts into one, for the purpose of maintaining both primary and high schools and further provides that 'Such organization and the government of such consolidated district shall be under and in compliance with the laws governing town and city school districts, as provided in Article (4)' of said chapter.

"Article Eleven of said Chapter (57) relating to the powers and duties of the state superintendent, including the classification of high schools and their work to be accredited is clearly within the scope of the facts in this case, and by the provisions of Sections 9447 and 9448, Revised Statutes 1929, the state superintendent clearly had the power, and for the purpose of providing more efficient educational opportunities it was his duty to propose and fix rules and regulations for the advancement thereof, certainly one of the most effective and beneficial of which is the progressive requirement relating to better qualifications of teachers.

"The directors of defendant district to the end that the school for which they had been elected as directors, would be enabled to keep step with the

advancing trend of educational facilities and opportunities, chose to follow the regulations and directions of the state superintendent who certainly by reason of his official position and duty, must without evidence to the contrary, be presumed to know how best to plan, advise and promote the most advantageous opportunities for the preliminary education of the youth of our State.

"In the letter from the respondent, School Board, replying to the appellant's application for a position as teacher, she was informed that her employment was 'on condition that the State will approve your work.'

"The written record of the election of all teachers was on the same condition, 'that the state approve their credits.' The letter of the state superintendent to the board, concerning the qualifications of plaintiff and the greater educational opportunities which he, by reason of his duty as the state superintendent, sought to maintain, was evidence of a high conception of public service sought, by the superintendent, to be interposed, as provided by law, for the benefit of the youth of the State. To hold otherwise would be a decided backward step."

In view of the statutes and the decision quoted supra, we think that the State Superintendent of Schools, in exercising his discretion in determining the best interests

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of all concerned, has the authority to demand, among other elements, that the teachers employed shall have sixty college hours credit. To hold otherwise would be a step backward in the rapid progress that is now being made in raising the standards of more than four thousand common school districts of the State with an average daily attendance of less than fifteen pupils.

Respectfully submitted,

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APPROVED:

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