SCHOOL FOR THE BLIND: Age of pupils must conform to limits fixed by Section 1, Article 11 of the Constitution.

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Dr. C. C. Chesterson, President
Board of Managers
Missouri School for the Blind
3815 Magnolia Avenue
St. Louis, Missouri

Dear Dr. Chesterson:

Under date of June 5, 1942, you wrote this office requesting an opinion as follows:

> "The Board of Managers of the Missouri School for the Blind respectfully requests an opinion upon the following:
>
> "Article 25, Revised Statutes of Missouri, 1939, places the maximum age limit of students at 21. The Constitution places the age limit at 20. Which is to be our guide?"

The Section of Article 25, to which your letter refers is Section 10853, which is as follows:

> "All blind and deaf persons under twenty-one (21) years of age, of suitable mental and physical capacity, who are residents of this state, shall be entitled to admission to the school for the blind and the school for the deaf, respectively. All admissions and discharges, and the length of the period of instruction of each pupil, shall be determined by the board of managers."

And the Constitutional limitation referred to is found in Section 1, Article XI of the

Constitution. This Section is as follows:

> "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this State between the ages of six and twenty years."

In a recent opinion from this office, it was held that the Missouri School for the Blind was included within the system of free public schools. The free public school system is authorized by Section 1, Article XI of the Constitution, set out herein, and the legislative acts relating to the free public schools must conform to the constitutional authority.

Section 10853, supra, sets out the age of persons who may attend the school for the blind as follows:

> " * * * all persons under the age of twenty one * * * * "

This is apparently a legislative interpretation of the portion of Section 1, Article XI of the Constitution fixing the age of persons who are entitled to attend the free public schools,

> " * * * all persons in this State between the ages of six and twenty years."

as including those persons who have passed their twentieth birthdays but who have not reached their twenty-first birthdays.

A legislative interpretation is entitled to some weight in considering the meaning of a constitutional or statutory provision but must give

way if found to be in conflict with the true meaning of the provision under consideration.

However, in the Michigan case of Jackson v. Mason, 145 Mich. 338, 108 N. W. 697, there was before the Supreme Court of Michigan an act containing language similar to that in Section 1, Article XI, Missouri Constitution. The Court in construing that act ruled as follows at local citation 698 N. W.:

> "The only question in the case is whether the statute applies to children above the age of 15 years. The circuit court held that it did not, and error is alleged upon such holding. The contention of the relator is that it applies to children over 7 years and under 16 years of age. The words of the statute before us for construction are, 'any child or children between and including the ages of seven and fifteen years.' It is urged that to give any force to the word 'including' the section must be construed to include children during the entire fifteenth year and until they become sixteen years old. We think to do so would be a doubtful construction and the court should hesitate to make an act a crime by such means. The statute is not ambiguous in designating the age limit between the ages of 7 and 15 years. The word 'including' has no force to extend that limit beyond the time specifically designated. A child over 15 years of age is not between the ages of 7 and 15 years, and therefore not within the provisions of the act. An examination of these provisions of the earlier acts shows: that by the act of 1895 compulsory education was enforceable for a period of 8 years as to children not in cities, and as to children in cities for a period of 9 years; that by the act

> of 1901 compulsory education was enforceable for a period of 7 years as to children not in cities, and as to children in cities for a period of 8 years. In each of these acts the children in cities were subject to its provisions one year earlier in life than other children in the state. The evident intent of the Legislature in the portion of the act of 1905 under discussion, establishing the limit between the ages of 7 and 15 years, being a period of 8 years was to fix the same age limit for all of the children in the state, at such a time in their lives, and for such a term between the two extremes of the former acts as experience had shown would be most satisfactory."

In this case the Court had under consideration a penal statute which was required to be strictly construed. The reasoning used, however, seems to be particularly applicable to the question here under consideration; and the Missouri case of Rogers v. McCraw, 67 M.A. 407, the St. Louis Court of Appeals had before it a question involving the proper allegation in a pleading as to the age of a person desiring to attend the free public schools. From this case the following extract is taken at l. c. 408:

> "The action of the court sustaining the demurrer must be affirmed. The school age as fixed by the constitution is between the ages of six and twenty years. (Constitution, article 11, section 1.) Section 6, of the same article declares that the public school fund 'shall be faithfully appropriated for establishing and maintaining the free public schools * * * in this article provided for, and for no other uses or purposes whatsoever.'
>
> "To entitle the plaintiff to maintain the action, she must have been within the school age (as fixed by the consti-

> tution) at the time she was prohibited from attending the school. Roach v. Board of Public Schools, 77 Mo. 484. This is one of the essential facts of her alleged cause of action. Under the code every constitutive fact must be distinctly set forth in the petition; otherwise it is the subject of demurrer. The averment is that at the time the plaintiff was excluded from the school 'she was over six and under twenty-one years of age.' It is manifest that the petition failed to state a cause of action."

Following these two cases it would appear that the language at Section 1, Article XI fixing the age of persons for whom free public schools must be maintained does not apply to persons who have passed their twentieth birthday.

If this is correct, then any statute enacted in accordance with the command contained in this Section could not modify the age requirements.

Section 10853, supra, undertakes to fix the maximum age for admission to the school for the blind as "under the age of twenty-one years".

## CONCLUSION

If the Missouri School for the Blind is included in the system of free public schools, Sec-

tion 10853, Article 25, Chapter 72, R. S. Mo., 1939, in setting the maximum age for attendance at the school above twenty exceeded the constitutional maximum which should be followed.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General

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