

SCHOOL FOR THE DEAF:
ADMITTANCE OF CHILD
UNDER 6 YEARS OF AGE:

Children under six years of age
may be admitted to Blind and Deaf
School if no school funds are used
for their maintenance and educa-
tion.

September 4, 1943

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Hon. Truman L. Ingle, Superintendent
Missouri School for the Deaf
Fulton, Missouri

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Dear Sir:

This is in reply to yours of recent date on the question of the school's authority to admit deaf children under six years of age for training. In our recent opinion to you we ruled that such children could not be admitted and schooled where the funds for such training and schooling come from the school funds. In this request you inquire if moneys from the "operation fund" of that institution could be used for the training and schooling of such children. In your letter you state the source of certain funds to that institution as follows:

"In addition to State School Monies, we have what is known as the Missouri School for the Deaf Fund. This fund is accumulated through monies earned from sale of cattle, excess milk or cream, payments by parents and counties for clothing and incidental expenses of the children."

Section 10853, R. S. Missouri, 1939, provides 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."

From this Section, the lawmakers did not fix the minimum ages of children to the school for the blind and deaf.

Under Section 1 of Article IV of the Constitution of Missouri, the General Assembly may enact any law not in violation of the Constitution. The only provision of the Constitution, which might be violated by this Section, is Section 1 of Article XI which provides for free public schools "for the gratuitous instruction of all persons in this state between the ages of six and twenty years."

Section 6 of Article XI of the Constitution of Missouri provides as follows:

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; the annual income of which fund, together with so much of the ordinary revenue of the State as

may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

The funds created by virtue of the provisions of said Section 6, supra, can only be used for the establishment and maintenance of free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty.

Certainly the lawmakers, in passing Section 10853, supra, had a reason for only fixing the maximum age of children who could be admitted to the school for the blind and deaf. We held in a former opinion that public school funds cannot be used for educating and training deaf and blind children under six years of age. However, this would not prevent the appropriation and expenditure of other public funds for this purpose. But, Section 46 of Article IV of the Constitution has this provision:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

In passing on the provisions of this section, the Supreme Court, in the case of Jasper County Farm Bureau v. Jasper County, 286 S. W. 381, 383, said:

"It is also true that many objects for which money may be appropriated are so clearly public in their nature that there could not well be any difference of opinion on the subject, such, for example, as public charities, and appropriations provided for the care of the indigent, destitute, and insane, either in institutions exclusively under state control or those

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maintained by corporations for purely
charitable purposes. * * * * "

So, it would seem that the lawmakers could appropriate moneys out of revenue for the purpose of keeping, maintaining and educating blind and deaf children under the heading of Public Charities.

From your statement it seems that your institution derives funds from sources other than school funds. So long as you do not use any of the public school funds to train and educate blind and deaf children under six years of age, you are complying with the statute in admitting such children to the school.

CONCLUSION

From the foregoing, it is the opinion of this department that children under six years of age, who are blind or deaf, may be admitted to the school for the blind and deaf at Fulton if no public school funds are expended for the training, educating and maintaining of such children. We are further of the opinion that public funds other than public school funds may be expended for said purposes.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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