

SCHOOLS
CONSTITUTIONAL LAW:

Section 3 (c), Article IX of the Constitution is self-enforcing; and it is the duty of the State Board of Education to enforce said provision.

July 20, 1948

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Honorable Hubert Wheeler
Commissioner of Education
Jefferson City, Missouri

Dear Mr. Wheeler:

We have your letter of recent date which reads as follows:

"Inquiry has come to the State Department of Education about the constitutional provisions of this State relative to differences in wages of teachers because of race or color. These communications indicate that in some cases differences are permitted in wages of teachers having the same training and experience because of race or color.

The new State Constitution of 1945 provides in paragraph 3, Section 3 of Article IX, as follows:

'No school district which permits differences in wages of teachers having the same training and experience because of race or color, shall receive any portion of said revenue or fund.'

As far as this Department can determine, this constitutional provision has not been implemented by legislation.

Section 10390, S.B. 100, Laws of 1947 provides in part that the State Board of Education shall annually, before August 31, apportion the public school fund for the benefit of the schools in the manner provided by law. This law further provides that the County Clerk of each county shall make a summary report of all school applications and forward them to the State Board of Education on or before July 15 each year. These reports contain specific information to be used as the basis for calculating the apportionment, as provided by law.

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In the opinion of the Attorney General to this Department August 18, 1941, it was ruled that the State Superintendent of Public Schools cannot question the application and certification, but must make the apportionment according to the figures presented in such application and certification.

I shall appreciate your advice and official opinion in regard to the following questions:

1. Is the constitutional provision, paragraph 3, Section 3, Article IX, self-enforcing without legislative implementation to direct the proper authority for requiring compliance with the act?
2. If the constitutional act is self-enforcing without legislation, who is vested with the power to determine whether or not there is discrimination in any particular case, and who is to take the necessary steps to enforce this constitutional provision?
3. Since the law requires the State Board of Education to apportion school money to districts based on the County Clerk's certified reports, would each particular case of discrimination require court action for a declaratory judgment in order that the State School Money may be denied a district by the State Board of Education?"

The first question to determine is whether or not the constitutional provision referred to in your letter is self-enforcing. In other words, is said constitutional provision so worded and constructed that it must be followed by those charged with enforcing the laws of the state, or does it have to be implemented by legislation by the General Assembly?

The general rule by which it may be determined whether a constitutional provision is self-enforcing was stated by our Supreme Court in the case of *State ex inf. v. Ellis* 325 Mo. 154, 28 S.W. 2d, 363, 365, as follows:

"The general rule is thus stated in 12 C.J.
p. 729:

'It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *

'Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.'

And further, page 730:

'A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficiency and operation on the legislative will.'

The same rule was stated with approval in the later case of State ex Inf. v. Wymore 343 Mo. 98, 119 S.W. 2d 941, 947.

Again in the late case of State ex rel. v. Smith 194 S.W. 2d, 302, 304, our Supreme Court stated the same general principle in a little different language, which is as follows:

"Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action."

When we apply the foregoing rules of construction to the constitutional provision mentioned in your letter, we think there is no question but what said constitutional provision is self-enforcing. Said constitutional provision leaves nothing to be done by the Legislature to put it into operation. There is nothing in the language of the provision which suggests that something must be done by the Legislature before said provision shall be effective. Said provision squarely lays down the provision that if a school district makes a discrimination in the wages of teachers having the same training and experience because of the race or color of the teachers, it shall receive no state revenue. We do not see what the Legislature could do to add to the protection thus given teachers, and certainly the Legislature could not take anything from the protection thus granted. Furthermore, we think that it would be a matter of common knowledge that questions of racial discrimination were very much before the Constitutional Convention and the public at the time of the adoption of the constitutional provision under consideration, and evidently the Constitutional Convention and the people had in mind remedying a situation which they considered existed at that time. Under the rules of construction above cited, when such a situation exists, the constitutional provision should not be construed as being dependent for its efficiency and operation on the legislative will. If this were not the rule, the will of the people as solemnly declared in their constitution could be easily thwarted by the inaction of the Legislature.

It is, therefore, our opinion that Section 3 (c), Article IX of the Constitution of 1945 is self-enforcing and that no legislation is necessary to implement said provision or to make it effective.

We now turn to the question as to who shall see that said constitutional provision is obeyed and made effective.

Section 10390, P. 500, L. 1947, provides for the apportionment of the public school fund. Said section provides that "The state board of education shall, annually, before August 31, apportion the public school fund applied for the benefit of the public schools in the manner provided by law." It should be observed at this point that the constitutional provision under discussion is part of the law as pointed out above. Said Section 10390 then sets out the basis for calculating the apportionment to the various districts. Said section further provides as follows:

"The clerk of each school district shall make a report and forward to the county superintendent of schools between June 15 and June 30 of each year, showing the number of teachers employed, the total number of days' attendance of all pupils, the length of the school term, the average attendance, the number of days taught by each teacher, the salary of each teacher, and any other information that the state board of education may require. (Emphasis ours.) The aforesaid report shall be sworn to before a notary public or the county clerk. After the reports are properly made the county superintendent of schools shall approve same and turn them over to the county clerk before July 5. The county clerk shall make a summary of all these reports and forward to the state board of education, on or before July 15, a report showing the total number of teachers employed in the county, and the total number of days' attendance of all pupils in the county, the number of teachers employed for the full term and the number for half terms, and the number whose salary is one thousand dollars or more per year, and such other information as the state board of education may require." (Emphasis ours.)

By the foregoing provision the State Board of Education is authorized to require from the district clerks and county clerks any information it may need in order to apportion the funds according to law. In order for the State Board of Education to apportion the school fund according to law, including the constitutional provision under discussion, it would need information regarding the training and experience of teachers and also their racial status. It could easily obtain this information by requiring the district clerks and the county clerks to furnish such information.

The responsibility of the State Board of Education for enforcing the constitutional provision under discussion is further emphasized by Section 8, p. 1641, L. 1945, which prescribes generally the duties of the State Board of Education. Said section reads in part as follows:

* * * Provided further, that the state board of education shall have authority and it shall be the board's duty:

First--to carry out the educational policies of the state relating to public schools as may now or hereafter be provided by law. * * *

Third--to cause to be assembled such information relative to the public schools of the state as will reflect continuously their condition and management.

Fourth--to require of county clerks or treasurers, boards of education or other school officers, recorders and treasurers of cities, towns and villages, copies of all records by them required to be made, and all such other information in relation to the funds and condition of schools and the management thereof as may be deemed necessary. * * *

Sixth--to provide blanks suitable for use by officials in reporting the information required by the board. * * *

It will be seen, therefore, that it is the duty of the State Board of Education to provide blanks suitable for use by officials in reporting the information required by the board. It is made the duty of the State Board of Education to require such information as will reflect the "management" of the various schools. If the management of such schools is making a discrimination between teachers having the same training and experience because of their racial status, such information should be shown on the blanks provided by the State Board of Education. One of the educational policies of the state is that no such discrimination should be made, and the duty to see that such policy is carried out is lodged with the State Board of Education, and said board is given ample authority to see that such policy is carried out.

It is, therefore, our opinion that the State Board of Education is charged with the responsibility of seeing that the constitutional provision under discussion is enforced and that such board has the authority to require of the clerks of school districts and also the county clerks such information as will enable it to determine whether the discrimination prohibited by said constitutional provision exists in any particular case.

What we have said above answers your third question which was "would each particular case of discrimination require court action for a declaratory judgment in order that the State School Money may be denied a district by the State Board of Education?" As pointed out above, the State Board of Education may, by proper efforts, have before it the information from which it can determine whether said constitutional provision is being violated. If the State Board of Education determines that any school district is violating the anti-discrimination provision of the constitution above referred to, it should deny such school district any portion of the public school fund. If the school district thus denied state funds should consider the action of the State Board of Education arbitrary and unwarranted, such district could resort to legal remedies to compel the State Board of Education to apportion it its proper share of said funds. The State Board of Education could justify a refusal of public funds to a district only upon a showing by the reports reaching its office of facts which clearly showed that the district was guilty of violating the constitutional provision under discussion, but if such reports showed such a discrimination, the State Board of Education could not be compelled to apportion funds to the offending district.

Conclusion

It is, therefore, the opinion of this office that (1) Section 3 (c), Article IX, Constitution of 1945, is self-enforcing, (2) it is the duty and responsibility of the State Board of Education to determine whether said constitutional provision is being violated by any school district and (3) it would not be necessary that a court action be had before the State Board of Education could determine whether or not there had been a discrimination by any particular district.

Yours very truly,

APPROVED:

HARRY H. KAY,
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