

SCHOOLS: Section 170.051, S.C.S.S.B. 638,
TEXTBOOKS: 76th General Assembly, requires
TUITION: a public school district to
"purchase and loan free all text-
books" for children resident of the district who are enrolled
in kindergarten classes held in a school which also enrolls
students seven years of age or older.

OPINION NO. 58

August 21, 1973



Dr. Arthur L. Mallory
Commissioner of Education
State Department of Education
Jefferson State Office Building
Jefferson City, Missouri 65101

Dear Dr. Mallory:

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

"Does Section 170.051, RSMo, S.C.S.S.B. 638, require a public school district to 'purchase and loan free all textbooks' for children resident of the district who are enrolled in kindergarten classes?"

Section 170.051, V.A.M.S., is part of Senate Committee Substitute for Senate Bill No. 638, enacted by the General Assembly in 1972. The heart of the law is contained in the first three subsections of Section 170.051, V.A.M.S., which read as follows:

"1. As used in this Section, the following terms shall have the meaning indicated unless the context otherwise requires:

"(1) 'Textbook', means workbooks, manuals, or other books, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group.

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"(2) 'School', means any elementary or secondary school, public or nonpublic, non-profit, within this state, and wherein a resident of the state may legally fulfill the compulsory school attendance school requirements of Section 167.031, RSMo.

"2. Each public school board shall purchase and loan free all textbooks for all children who reside in the district and attend an elementary or secondary school in this state.

"3. Textbooks shall be loaned to all pupils residing in the district on an equitable basis and without discrimination on the grounds of race, creed, color, national origin, or school attended."

The remainder of Section 170.051 and all of Section 170.055, V.A.M.S., provide the mechanism for the purchase, distribution, and control of the textbooks.

Under subsection 2 of Section 170.051, textbooks shall be loaned to all children residing in the school district and attending "an elementary or secondary school in this state." You ask whether a student enrolled in kindergarten is attending an elementary school within the meaning of Section 170.051.

In Section 160.011, RSMo 1969, "public school" is defined to include "all elementary and high schools operated at public expense. . . ." Only two classifications of schools are provided for, elementary and high schools. There is no third classification of schools called kindergarten schools.

In the same section, "elementary school" is defined as "a public school giving instruction in two or more grades not higher than the eighth grade. . . ." In this definition, no limit is placed on where elementary school begins.

In determining the probable intent of the Legislature concerning this question, we may look to administrative regulations in force at the time the law was approved, since the Legislature acts within the framework of the ongoing operation of Missouri schools. England v. Eckley, 330 S.W.2d 738 (Mo. banc 1959); Community Memorial Hospital v. City of Moberly, 422 S.W.2d 290

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(Mo. 1967); and Farmers State Bank v. Stewart, 454 S.W.2d 908 (Mo. banc 1970). When we do this, we find that the State Board of Education, the agency entrusted with the duty of supervising public education in Missouri, treats kindergarten as part of elementary school.

In the School Administrator's Handbook (Publication No. 20-H, 1969), published by the State Board of Education and filed with the Secretary of State, various rules and regulations are set out, among which are those pertaining to the classification of Missouri public schools. Classification is a responsibility of the State Board of Education pursuant to Section 161.092(9), RSMo 1969. "Elementary school" is defined in the Handbook at pages 115-116 as "that part of a school system which has a distinct organization including grades within the limits of kindergarten through eight inclusive." Immediately thereafter "kindergarten" is defined as "that part of the elementary school which provides appropriate learning activities for children five years of age." Thus, when the State Board of Education looks at elementary schools for evaluation and classification purposes, it considers kindergartens as an integral part of the elementary school.

We are aware of the reference in Section 170.051 to the compulsory school attendance law (Section 167.031, RSMo 1969) and of the reference in Section 170.055 to the district's enumeration list (Section 167.011, RSMo 1969), as a basis for the distribution of funds credited to the county foreign insurance tax fund for the purchase of textbooks. Neither the compulsory school attendance law nor the enumeration list law includes kindergarten-age students. We believe that the reference to the compulsory school attendance law was made in an effort to assure that students receiving aid under this Act were attending bona fide schools recognized by the state, and that the reference to this law was not meant to exclude from the benefits of the Act students attending kindergarten at qualified schools. (However, in the event that a school offers only kindergarten, or kindergarten and pre-school, classes and does not enroll any students seven years of age or over, then students attending that school would not be entitled to free textbooks.) Similarly, the pupil enumeration list is the only census currently available listing the school-age population (between 6 and 20) by school district regardless of schools attended. The use of the enumeration list to determine a district's share of the foreign insurance tax moneys used to finance

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the law does not indicate the Legislature's intent to exclude kindergarteners from the benefits of the Free Textbook Act.

Based on the foregoing, both as a matter of legal definition and administrative interpretation, we conclude that kindergarten is commonly thought to be a part of an elementary school. We find no language in Section 170.051 which indicates that the Legislature chose to have the term "elementary school" defined more narrowly for the purposes of that section than it is in other portions of the school laws and regulations.

CONCLUSION

Therefore, it is the opinion of this office that Section 170.051, S.C.S.S.B. 638, 76th General Assembly, requires a public school district to "purchase and loan free all textbooks" for children resident of the district who are enrolled in kindergarten classes held in a school which also enrolls students seven years of age or older.

The foregoing opinion, which I hereby approve, was prepared by my assistants, Richard E. Vodra and D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH
Attorney General