

SCHOOLS: A school district which provides only an  
SCHOOL AID: elementary school program is not authorized  
SCHOOL BOARDS: to begin a ninth grade for its resident  
SCHOOL DISTRICTS: ninth grade students, and such district is  
not entitled to state aid under Section  
163.031, RSMo 1978, for the ninth grade students attending such un-  
authorized ninth grade program.

October 28, 1982

OPINION NO. 67

Dr. Arthur L. Mallory  
Commissioner of Education  
Department of Elementary and  
Secondary Education  
Post Office Box 480  
Jefferson City, Missouri 65102



Dear Dr. Mallory:

This is in response to your request for an official opinion on the following questions:

1. Is a school board which provides only an elementary program, K-8, authorized by law to begin a 9th grade for its resident 9th grade students?
2. If it is determined that the board is not authorized by law to operate a 9th grade program, is the district entitled to state aid under Section 163.031, RSMo, for 9th grade students if it begins a 9th grade program?

A school board, as a creature of statute, can exercise only the authority that is expressly conferred upon it or is necessarily implied from the powers that are conferred. Cape Girardeau School Dist. No. 63 v. Frye, 225 S.W.2d 484, 488 (Mo.App. 1949). Sections 177.091 and 177.131, RSMo 1978, grant to school boards the authority to establish elementary schools and high schools.

Section 160.011, RSMo 1978, as amended by Senate Bill No. 832, Laws 1982, effective August 13, 1982, provides in relevant part:

As used in [Chapter 177, RSMo], unless the context otherwise requires:

\* \* \*

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(2) "Elementary school" means a public school giving instruction in two or more grades not higher than the eighth grade;

\* \* \*

(4) "High school" means a public school giving instruction in two or more grades not lower than the ninth nor higher than the twelfth grade[.] [Emphasis added.]

Thus, by explicit statutory definition, an "elementary school" may not include any grade higher than the eighth grade, and a "high school" must include at least two grades not lower than the ninth grade. Therefore, we believe that a school district which operates only an elementary school is without authority to establish a ninth grade for its resident ninth grade students.

Section 163.031, RSMo 1978, contains the formula whereby state aid is distributed to local school districts for the provision of educational services to resident pupils in the district. It is generally held that the disbursement of state funds is regulated by the Constitution or by statute and may be disbursed only for purposes and in the manner therein described. 81A C.J.S. States § 226 (1977). Furthermore, an appropriation to a state agency or department can only be used for purposes and objects within the authority of the agency or department. 81A C.J.S. States § 241 (1977). See generally, State v. Weatherby, 129 S.W.2d 887 (Mo. 1939).

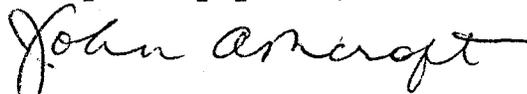
Since a school board which operates only an elementary school program is not authorized to also provide ninth grade instruction, the State Board of Education is without authority to disburse state funds to such district for its resident ninth grade pupils receiving such unauthorized instruction.

#### CONCLUSION

It is the opinion of this office that a school district which provides only an elementary school program is not authorized to begin a ninth grade for its resident ninth grade students, and that such district is not entitled to state aid under Section 163.031, RSMo 1978, for the ninth grade students attending such unauthorized ninth grade program.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Leslie Ann Schneider.

Very truly yours,



JOHN ASHCROFT  
Attorney General