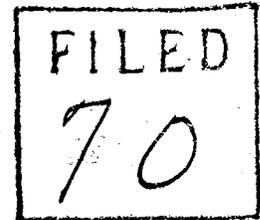


EDUCATION: Interpretation of Senate Bill No. 4 of the 64th General Assembly. Military schools with college status not required to teach the courses enumerated in said bill in the college years.

August 7, 1947



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Mr. C. A. Phillips, Chairman
Committee on Accredited Schools and Colleges
University of Missouri
Columbia, Missouri

Dear Sir:

This is in reply to your letter of recent date, wherein you requested an opinion of this department relative to the interpretation of Senate Bill No. 4 of the 64th General Assembly. Said letter reads as follows:

"Certain questions have arisen about the provisions of Senate Bill No. Four of the Sixty-fourth Assembly to non-public schools. As you know, the University Committee on Accredited Schools and Colleges visits and inspects all of the private or denominational secondary schools in the state on request of the institutions. The results of these visitations and inspections are reported directly to the Committee on Accredited Schools and Colleges for approval.

"Already I have requests for the interpretation of this law from a military school which has a large number of out of state students. This institution has both high school and college status and a school for women, which is normally under church control. It happens that large numbers who come to this school are from other states. Now, my question is this: 'Do these schools have to comply exactly with the provisions of this bill?' Section 10,373 would seem to indicate that all institutions in the state would have to meet the requirements. However, Section 10,374 seems to confine the instruction to state institutions.

"I would appreciate a formal opinion of this matter for the guidance of the committee."

A well recognized principle of statutory construction, still applied by the courts in this state, was expressed by the Supreme Court of Missouri in the early case of *Spitler v. Young*, 63 Mo. 42, where the court said at l.c. 44:

** * * Statutes must be construed in reference to the subject matter, the objects which prompted and induced their enactment, and the mischief they were intended to remedy. * * *

We think it cannot be denied that a very important factor which largely prompted the enactment of Senate Bill No. 4 of the 64th General Assembly was the then, and to a large extent continuing, hostility to certain forms of government which are basically opposed and repugnant to the democratic form of government which we have in this country. There was, at the time of this legislation, the general feeling that those other forms of government were becoming more aggressive even in our own country. To possibly counteract this threat, it was no doubt felt desirable to provide in our schools a course of study to better acquaint the youth of this state with the American and state governments and some of their history. In order to carry through the program of education, Senate Bill No. 4 provided what courses should be included in the course of instruction, and said it shall be "in all public and private schools located within the State of Missouri, except privately operated trade schools * * *."

Other applicable rules of statutory construction are set out in the case of *Hannibal Trust Company v. Elzea*, 286 S. W. 371, where the court said at l.c. 377:

"While the fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature, such intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, otherwise they would be assuming legislative authority. 36 Cyc. 1106. As said by this court, in Banc, in *Grier v. Railway Co.*, 286 Mo. loc. cit. 534, 228 S. W. 457:

"The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction."

And the court continued at l.c. 377:

"Again, in the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. * * *"

In an attempt, then, to determine the legislative intent, and bearing in mind the above quoted principles of statutory construction, by the natural and plain interpretation and ordinary signification of the words used in Senate Bill No. 4, what did the Legislature actually say? Section 10373 of said bill reads as follows:

"In all public and private schools located within the State of Missouri, except privately operated trade schools, commencing with the school year next ensuing after the passage of this Act, there shall be given regular courses of instruction in the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions."

In an attempt to ascertain the meaning of the word "schools" as used in said section, we find in Webster's Dictionary, Second Edition, that "school" is defined as: "The process of being instructed or educated in institutions for teaching the young, usually not including colleges." Black's Law Dictionary, Second Edition, says that a school is "an institution of learning of a lower grade, below a college or a university. A place of primary instruction." In 47 Am. Jur., we find they say at page 297:

"* * * Thus, the word 'school,' as used in Constitutions and statutory enactments, has

been frequently defined by the courts as referring only to the public, common schools generally established throughout the United States, and usually known as the 'common schools' of the country. It has been held that when used in a statute or contract it will not include universities, business colleges, or other institutions of higher education, unless there is something clearly to indicate the intent that such institutions should be included.* * *

In *State v. Erickson*, 75 Mont. 429, the Supreme Court of Montana said at l.c. 441:

"* * * The terms 'school,' 'college,' and 'university' convey the same idea, differing only in grade.* * *

In *Roach v. Board of Trustees of St. Louis Public Schools*, 77 Mo. 484, the court said at l.c. 487:

"The term 'school,' ex vi termini, does not imply a restriction to the rudiments of an education. When contrasted with the term 'college' or 'university,' it may and ordinarily does imply a lower grade, but just where the one ends and the other begins, may not be easy to define.* * *

Applying the wording of the Missouri Supreme Court, we believe the term "school" was meant to be contrasted with, and distinguished from, the words "colleges" and "universities" in the present act. Section 10374 of said Senate Bill No. 4 says:

"Such instruction in the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions, shall begin not later than the opening of the Seventh Grade, and shall continue in the high school courses and in the courses in state colleges and universities and, to an extent to be determined by the State Commissioner of Education."

From this section, we find that the enumerated course of instruction is to begin not later than the opening of the seventh grade and is to continue in the high school courses. And then it is stated that the instruction is to be "in the courses in state colleges and universities and, to an extent to be determined by the State Commissioner of Education." In Senate Bill No. 7, passed by the 63rd General Assembly, to be found in Missouri Laws of 1945, page 1622, we find the authority given to the board of regents of each state teachers college to change the name of its college to merely read, "state college." A rule of construction too well recognized to allow any doubt is that the Legislature is presumed to know the law. It is our belief that the Legislature had this in mind when, in Section 10374, they referred to "state colleges and universities," thereby meaning the colleges and universities endowed by state funds. Otherwise the Legislature need only have said colleges and universities, thus omitting the word "state," which would have included all colleges and universities within the State of Missouri.

We do not feel it is the province of this department, in construing statutes, to thus drop words and change the construction of phrases that obviously the Legislature intended to imply a particular meaning. By specifically adding the phrase "state colleges and universities" in Section 10374, we think the Legislature was adding to the schools included in Section 10373, and that all other colleges and universities were meant to be excluded. It is a well-known canon of statutory construction, as expressed in *State ex inf. Conkling ex rel. Hendricks v. Sweaney*, 270 Mo. 685, that the expression of one thing is the exclusion of another.

Section 10374a of Senate Bill No. 4 reads:

"No pupil shall receive a certificate of graduation from any school described in Section 10373, unless he has satisfactorily passed an examination on the provisions and principles of the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions."

In *Commonwealth v. Connecticut Valley Street Railway Company*, 82 N.E. 19, the Supreme Judicial Court of Massachusetts said at l.c. 21:

"The statute which we are now to interpret provides only for 'pupils.' The word 'pupils,'

by derivation and the definition of lexicographers, is properly applicable to children and youth. Students in colleges and professional schools are not called pupils."

We think this distinction in the terms "pupil" and "students" was intended in the present act, especially in view of the fact that the term "student" is used in the second paragraph of Section 10374a when referring to college and university, and which reads as follows:

"A student of a college or university, who, after having completed a course of instruction prescribed in this article and successfully passed an examination on the provisions and principles of the United States Constitution, and in American history, including the study of American institutions, transfers to another college or university, shall not be required to complete another such course or pass another such examination as a condition precedent to his graduation from such a college or university."

We interpret this above quoted paragraph to refer to the student of a college or university whose instruction is prescribed in this article, the same being a student of a state college or university.

A further indication of the intention of the Legislature in distinguishing between schools and colleges is to be found in Section 10374c of said bill, which reads as follows:

"The State Commissioner of Education shall make arrangements for carrying out the provisions of this article and prescribe a list of suitable texts adapted to the needs of the school and college grades. (Underscoring ours.)

Applying, then, the rules of construction above indicated, and in an attempt to ascertain the intention of the Legislature in said Senate Bill No. 4, we feel that the word "schools" as used in Section 10373, means grade and high school, or the equivalent thereof; that the "state colleges and universities"

referred to in Section 10374 means those colleges and universities in the state that are endowed by state funds; and that the word "pupil," as used in Section 10374a, refers to those attending a grade or high school, and "student" refers to those attending a college or a university.

One further point we should like to point out as indicating the general plan and intention of the Legislature on this subject is the fact that Section 1 of said Senate Bill No. 4 provides:

"That Article 2 of Chapter 72, Revised Statutes of Missouri, 1939, relating to schools be and the same is hereby amended by repealing Section 10373 providing for the giving of regular courses of instruction in the Constitution of the United States and the State of Missouri; and by repealing Section 10374 providing that instruction shall begin in certain grades, and adding in lieu thereof six new sections relating to the same subject matter; and providing in addition, that no pupil shall receive a certificate of graduation from any school unless he or she has passed an examination on the provisions and principles of the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions; with power in the State Commissioner of Education to carry out and enforce the provisions of this act, * * *"

It is to be noted that said Sections 10373 and 10374 of the 1939 Revised Statutes were quite similar in their provisions for the courses of instruction in the public and private schools as is now provided for in Senate Bill No. 4. Said sections were in Article 2 of Chapter 72 of the 1939 Revised Statutes, which contains laws applicable to all classes of schools, and on a review of those sections, we find that, in dealing with schools, it does not refer to colleges and universities. We do not feel that said sections have been previously interpreted to mean such instruction should exist in private colleges. These two sections have been on the statute books for several years and through several revisions, with no indication that said sections should be interpreted otherwise. We think this is a further indication of the legislative intent as to the application of Senate Bill No. 4. As was stated by the court in *State v. Brown*, 105 S.W. (2d) 909, 1.c. 911:

"In construing statutes in pari materia, endeavor should be made, by tracing history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature or to discover how the policy of the Legislature with reference to the subject matter has been changed or modified from time to time.

* * *"

CONCLUSION

In view of the above, it is the opinion of this department that the courses in the Constitution of the United States and of Missouri and in American history, including the study of American institutions, in accordance with Senate Bill No. 4 of the 64th General Assembly, must be included in all grade schools, commencing with the seventh grade and continuing through high school, and in courses in state endowed colleges and universities, to an extent to be determined by the State Commissioner of Education. It is further the opinion of this department that any military school in the state would be required under said bill to teach the courses as included therein, commencing with the seventh grade and continuing through the high school grades. Such military school with a college status, if not endowed by state funds, would not be required to teach the courses in the college years.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WCC:LR