

Compulsory Education.

Under the compulsory education law, Sections 1920 to 1925, inclusive, Political Code, as amended by Chapter XLV ; laws 1905, p. 92, all children between eight and sixteen years of age must attend school during the school term while the public schools are in session, unless they are excused as therein provided.

Helena, Montana, Nov. 3, 1905.

Hon. W. E. Harmon, Superintendent of Public Instruction, Helena, Montana.

Dear Sir:—I am in receipt of your request for an opinion from this office respecting the proper interpretation to be placed upon the compulsory education law. Accompanying your said request you handed me for consideration the letter of R. G. Young, city superintendent of public schools, Butte, Montana, expressing his views upon this subject, and also a copy of an interpretation, upon conference, made and placed upon the law by the Honorable Michael Donlan, one of the Judges of the District Court of Silver Bow County, R. G. Young, city superintendent of public schools, and E. B. Werrick, Chairman of the Board of School Trustees of the City of Butte.

After full and careful consideration of the views expressed by you in your said communication, and of the enclosures accompanying the same, and of the questions raised and presented, we give you the following interpretation of the intent, meaning and purpose of the law.

A careful reading and consideration of the law in question, Section 1920 to 1925, inclusive, Political Code, as amended by chapter XLV, laws 1903, p. 92, has brought us to the following conclusions:

First: All children between eight and fourteen years of age must attend school during the school term and while the public schools are in session, in no case less than sixteen weeks, unless they are excused, as provided by amended section 1920, provided that when any such child is excused from attending school by the principal of a private or parochial school, upon satisfactory showing made pursuant to the requirements of the law, such certificate to be effectual must be approved by the superintendent of schools, or his representative, or by the clerk of the board of trustees in any village or township district.

Second: All children between fourteen and sixteen years of age, if not engaged in some regular employment, must attend school during the school term and while the public schools are in session, in no case less than sixteen weeks. And even though any such child be over fourteen years of age and engaged in regular employment, he must be compelled to attend school in accordance with this law, unless he shall first have obtained an age and schooling certificate from the superintendent of schools or from a person duly authorized to act for the superintendent in cities or other districts having such superintendent, or by the clerk of the board of trustees in villages and township districts not having a superintendent, that he can read and write legibly the English language. Before issuing or approving any such age and schooling certificate, the superintendent of schools, his representative, or the clerk of the board of trustees, must have satisfactory proof of the age of the minor and that he can read and write legibly the English language.

Third: All children under the age of fourteen years, having employment or desirous of securing employment, may be excused from a compliance with this law only when they shall have first, upon satisfactory proof of age and successful completion of the studies enumerated in amended section 1920, secured an age and schooling certificate, approved by the superintendent of schools, or his representative, or by the clerk of the board of school trustees in any village or township not having a superintendent.

From the above analysis of the true intent and meaning of the law, you should have little, if any, difficulty in applying the same. But you say that as a subterfuge, and in order to evade the law, children between the ages of eight and sixteen years refrain from attending school in the day time and go for an hour or two at night, claiming that they are thereby exempted from attending school in the day time, because of a compliance with the law in attending school during the school term. The question then arises, whether or not attendance upon a private night school is a sufficient excuse for children not attending private, parochial or public schools during the day time?

We are of the opinion, after careful consideration of the law, that attendance upon a night school by children under the age of sixteen years is a subterfuge and cannot be permitted, unless they shall have first received an age and schooling certificate, as provided for by law. In sup-

port of this construction which we have placed upon the law, it will be noticed that the law expressly requires attendance at school "during the school term and while the public schools are in session * * * in no case * * * for less than sixteen weeks during any current year." That attending a night school would not be attending school during the school term and while the public schools are in session seems perfectly clear.

In further support of this construction placed upon the law, you are cited to section 1862, Political Code, as amended by Senate Bill No. 104, laws 1897, p. 132, which provides: "The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees in any district having a population of five hundred or more may fix as the school day a less number of hours than six, provided that it be not less than four hours, except in the lowest primary grades where the pupils may be dismissed after an attendance of two hours."

In the light of this definition made by the law of a school day as applied to the compulsory education law, it is necessary that children of the ages therein prescribed shall attend school not less than six hours each day during the term, unless the board of school trustees of any district having a population of five hundred or more shall have fixed the school day at a lesser number of hours than six, and provided that it is not within the authority or province of any such board of trustees to fix the length of a school day at less than four hours; and section 1843, Political Code, defines a school month as twenty days or four weeks of five days each. Accordingly, a school week consists of five days. The standard of efficiency required under the law of children between fourteen and sixteen years of age "to read and write legibly the English language," is clearly left to the superintendent, his representative, or the clerk of the board of trustees in any village or township district. The law is clear, for it says, the certificate shall be issued "upon a satisfactory proof of the age of such minor * * * and a knowledge of his or her ability to read and write legibly the English language." The "knowledge" obtained by the superintendent, his representative, or by the clerk of the board of trustees of any village or township district, can only be obtained by an examination or a personal acquaintance respecting such child's ability to read or write, and therefore he must exercise his proper judgment and discretion to determine whether or not a child is entitled to have such certificate.

I herewith return you the enclosures which you submitted for our information and consideration, and I sincerely hope that we have fully covered by this opinion the questions by you presented.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.