



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 3, 1977

ATTORNEY GENERAL OPINION NO. 77- 2

Mr. Richard A. Medley
Assistant County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

RE: Schools--Compulsory Attendance--Private Tutor

Synopsis: The parents of a child subject to the compulsory attendance law may not withdraw that child from a public or private school and hire a private tutor to handle the education of their child, for home instruction is not an excuse for nonattendance under the Kansas truancy act.

* * *

Dear Mr. Medley:

You have requested my opinion whether parents may remove their children from a public school system and employ a private tutor to handle the child's education.

K.S.A. 72-1111 provides in pertinent part:

"Every parent, guardian or other person in the state of Kansas, having control over or charge of any child who has reached the age of seven (7) years and is under the age of sixteen (16) years, shall require such child to attend continuously a public school or a private, denominational or parochial school taught by a competent instructor, each school year, for such period as the public school of the school district in which the child resides is in session...."

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In State of Kansas v. Lowry, 191 Kan. 701, 383 P.2d 962 (1963), the defendants, Mildred E. and Ray F. Lowry, withheld their children from enrollment in the public school system on the basis that Mrs. Lowry, a licensed teacher, was conducting a private school within the parameters of K.S.A. 72-1111. In upholding the Lowry's subsequent conviction for permitting the truancy of their children, the Kansas Supreme Court stated:

"In order to be classed as a private school, any school in this state must at least meet the course of instruction requirements of K.S.A. 72-1103, and the students must be taught by a competent instructor in the English language for the prescribed time as provided by G.S. 1949, 72-4801. (Now Repealed)"

Further clarification of this issue is provided in the case of State v. Garber, 197 Kan. 567, 419 P.2d 896 (1965) wherein the Court stated:

"A system of education which consists essentially of home instruction does not satisfy the requirements of our compulsory school attendance law (K.S.A. 1965 Supp. 72-4801).

* * *

The legislature has made no provision for the giving of instruction equivalent to that given in a public, private, denominational or parochial school as a basis for exemption from the provisions of the compulsory school attendance law. The only exemption now enumerated in that law is based on physical or mental disability of the child, and, in view of the legislative history of the statute, this is deemed exhaustive of such exemptions...."

In balancing the rights of parents against the state's exercise of the police power, the Court further stated:

"The natural rights of a parent are subordinate to the police power of the state and may be restricted by municipal law providing minimum educational standards.

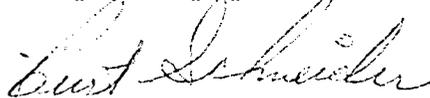
Our compulsory school attendance law (K.S.A. 1965 Supp. 72-4801) is a valid exercise of the police power...."

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Under these decisions, private home instruction is not a legally acceptable alternative to attendance at a public or private school. In Garber, supra, the court observed that home instruction would not be acceptable even if course of home instruction were equivalent to that required by K.S.A. 72-1103 to be offered by public and private schools:

"Thus we see neither the American nor the Harmony school, being essentially home instruction systems, constitutes a private, denominational or parochial school within the meaning of our truancy act. Even if, as contended by defendant, the instruction given through them could be considered as instruction equivalent to that given in a public, private, denominational or parochial school, this would not be an excuse for nonattendance at the latter for the reason that the legislature has made no provision for such equivalent instruction as the basis for exemption." 197 Kan. at 571.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/HTW/cgm