

701201.1

SCHOOL DISTRICTS: Duty of Board of Education to provide minimum school year of 180 days.

Boards of education of school districts are required by law to conduct 180 days of student instruction in a school year. Days lost because of a teacher strike must be made up in order to comply with the requirement of 180 days of student instruction.

No. 4714

December 1, 1970.

Hon. Marvin R. Stempien
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following question:

"Do the statutes require Local School Boards to conduct 180 days of school in an instance in which a teachers' strike occasions a belated commencement of the school year or may a school board terminate the school year at the usual time notwithstanding the non-completion of the 180 days because of the above-type labor dispute?"

Act 269, P.A. 1955, as amended, being M.C.L.A. § 340.1 et seq.; M.S.A. 1968 Rev. Vol. § 15.3001 et seq., is known as the school code of 1955.

Section 575 of the school code of 1955, as amended by Act 72, P.A. 1970, provides in pertinent part:

"The board of every district shall determine the length of the school term. *The minimum number of days of student instruction shall not be less than 180.* Any district failing to hold 180 days of student instruction shall forfeit 1/180th of its total state aid appropriation for each day of such failure . . . *Days lost because of strikes or teachers conferences shall not be counted as a day of student instruction.* The state board of education shall establish rules for the implementation of this section." (Emphasis supplied)

Consideration must also be given to Section 31 of Act 312, P.A. 1957, as amended, being M.C.L.A. § 388.641; M.S.A. 1968 Rev. Vol. § 15.1919(81), which provides as follows:

"No school district shall share in any apportionment of the appropriation contained in section 8 et seq. unless school shall be taught in said district for the minimum term of 9 months: Provided, however, That whenever it shall appear to the satisfaction of the superintendent of public instruction that any district has failed to have the full-time of school required by law through no fault or negligence of the district or its officers, he may, in his discretion, include such district in his apportionment."

The State Board of Education has promulgated administrative rule R340.14, 1954 Administrative Code, Supplement No. 63, p. 19, which provides in part:

"Rule 14 (3). A day of student instruction shall be a day when pupils and certificated teachers are present and instruction is scheduled and provided for the entire pupil membership of a school district with at least 70% of the total pupil membership, as of the appropriate fourth Friday count, in attendance. *A school district's calendar shall be extended for each scheduled day not counted to provide a minimum of 180 days of student instruction for elementary and high school pupils.*" (Emphasis supplied)

The State Board of Education has also, by rule, determined days not in session which may not be counted as days of student instruction. Administrative Rule 340.16, 1954 Administrative Code, 1968 Ann. Supp., p. 4727, provides in part:

"Rule 16. Days not in session because of strikes or teacher conferences shall not be counted as days of student instruction."

Section 575 of the school code of 1955, as amended, supra, was construed by Wayne County Circuit Judge Victor J. Baum on September 26, 1968, in *Irwin v. Ecorse Board of Education* to preclude any option in a board of education to provide or not to provide 180 days of student instruction, subject only to a loss of state school aid of less than 180 days are provided. Judge Baum traced the legislative history of Section 575 of the school code of 1955, supra, found the legislative intent to be plain and concluded that there was nothing in the statute that would suggest that forfeiture of state school aid is the exclusive penalty or remedy for failure to provide 180 days of student instruction. The conclusion of Judge Baum is supported by the decision of the Michigan Supreme Court in *Board of Education of Presque Isle Township School District No. 8 v. Presque Isle County Board of Education* (1961), 364 Mich. 605, in which the Court upheld the attachment of a closed school district provided for by the statute and rejected the claim of the board of education of such closed school district that it could continue in existence, subject only to the penalty of loss of its proportionate share of state school aid.

The legislature has conferred authority upon the State Board of Education to promulgate rules to implement Section 575 of the school code of 1955, supra. Moreover, the Michigan Supreme Court has ruled in *Welling v. Livonia Board of Education* (1969), 382 Mich. 620, that the State Board of Education has constitutional authority to specify the number of hours necessary to constitute a school day for elementary school students as conferred by the people in Article VIII, Section 3 of the Michigan Constitution of 1963.

There is no conflict between Rules 340.14(3) and 340.16, as promulgated by the State Board of Education, and Section 575 of the school code of 1955, as amended, supra. The duty of a board of education of a school district thereunder is abundantly clear. It must provide a minimum of 180 days of student instruction. Any day lost as a result of a strike shall not be counted as a day of student instruction, and a school district's calendar shall be extended for each scheduled day not counted to provide a minimum of 180 days of student instruction for elementary and high school pupils.

A board of education has no discretion to provide a school year of less than 180 days of student instruction.

It is the statutory duty of the State Board of Education, in accordance with Section 252(c) and (e) of the school code of 1955, as amended, and Section 14 of Act 287, P.A. 1964, being M.C.L.A. § 388.1014; M.S.A. 1968 Rev. Vol. § 15.1023(14), to require each board of education to provide a minimum of 180 days of student instruction for its pupils.

Therefore, it is my opinion that boards of education of school districts are required by law to conduct 180 days of student instruction in a school year. Days lost because of a teacher strike must be made up through extension of the school district's calendar to comply with the requirement of 180 days of student instruction.

FRANK J. KELLEY,
Attorney General.

701208.1

LEGISLATURE: Apportionment of both houses.

EQUAL PROTECTION CLAUSE: Reapportionment of both houses of the legislature.

SENATE: Provision for four-year terms not in violation of equal protection clause.

The equal protection clause of the Fourteenth Amendment requires that members of both houses of a bicameral state legislature be elected from districts apportioned upon the basis of population according to census figures current at the time of establishment of senate districts.

No. 4710

December 8, 1970.

The Honorable Alex Pilch
State Representative
House of Representatives
The Capitol
Lansing, Michigan 48903

You have requested my opinion as to whether the provisions of the Michigan Constitution for the reapportionment of the legislature satisfy the requirements of the equal protection clause of the Fourteenth Amendment to the Federal Constitution that both houses of a bicameral state legislature be reapportioned periodically based upon population determined in accordance with reasonably current census figures. The issue raised is occasioned by the fact that the legislative reapportionment based upon the 1970 Federal decennial census will presumably be completed so that members of the house of representatives will be elected from those districts at the 1972 general November election for a term of two years commencing on January 1, 1973. Members of the senate are, however, elected for four-year terms¹ and having been elected at the 1970 general

¹ Article IV, Section 2, Michigan Constitution of 1963.