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OFFICIAL OPINION NO. 28

July 2, 1959

Honorable William E. Wilson
State Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your letter of May 11, 1959, has been received and reads as follows:

“The enclosed Brief and Program were submitted to the Commission on General Education at their meeting on May 8, 1959.

“The program asked for proposes an agricultural vocational training for children of Amish Mennonites who have finished the elementary grades and are under the age of 16 years.

“Will you please give me an Official Opinion whether or not the program outlined meets the legal requirements of the school laws of Indiana?”

The petition attached to your letter requests that the Old Order of Amish Mennonites be permitted to establish church vocational schools under a plan similar to that reported to be acceptable to the State of Pennsylvania.

According to the information supplied with your letter, the Pennsylvania plan permits church operation of private schools offering instruction in certain required subjects supplemented by supervised home projects in agriculture and homemaking, which schools meet certain requirements as to length of school year and day and the pupils of which are required to average half a school day in classroom attendance. Parents, in the capacity of cooperative teachers, “assist in the teaching in connection with the farm work and homemaking” and follow the advice of the visiting supervising teacher or principal. Local school officials are informed of the teachers’ names and teachers and parents must make attendance and progress reports.

The Brief submitted in support of such petition reads in part as follows:

“The basis of excusing the 14 to 16 year old pupil is an exemption to the compulsory act and is *based on a work permit* as provided for in that Act, which is first recommended by the County or District Superintendent of Schools having supervision of the District where such child resides or by the Principal of the private school where such child is enrolled and the reason has been approved by the Superintendent of Public Instruction.” (Our emphasis)

In 1948 O. A. G., No. 64, page 395, one of the issues decided was that “pupils who are not sixteen years of age and who have completed the eighth grade” could be compelled to attend high school, unless they were within certain exceptions, including being deaf, blind, or physically or mentally unfit, or had been issued a lawful employment certificate which would permit the child to withdraw from school.

The Acts of 1953, Ch. 249, as found in Burns' (1957 Supp.), Section 28-505o provides another exception in that a child is not required to attend public school if he is “provided with instruction equivalent to that given in such public school.”

The submitted Brief neither asserts nor implies that the proposed vocational church school would offer equivalent instruction, being directed instead to work permits as a basis for the proposed plan. It is stated the program in Pennsylvania was adopted by the Department of Public Instruction through the State Superintendent of Public Instruction through statutory authority granted for the making of such regulations on a state level. It is suggested the State Board of Education of the State of Indiana has the same authority and suggests the approval of such a program by the state agency. I do not find such authority to exist in the State Board of Education of this state. Acts of 1921, Ch. 132, Sec. 6, as found in Burns' (1948 Repl.), Section 28-506, provides:

“Any child over fourteen [14] and under sixteen [16] years of age who has completed the work of the first eight [8] grades of the public school or its equivalent may be permitted to withdraw from school upon

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the issuing to such child of a lawful employment certificate. Any child so permitted to withdraw from school shall return to school within five [5] days after the termination of the employment for which such employment certificate was issued. No child holding a lawful employment certificate at the time this act goes into effect shall be required to re-enter school because of any increase in educational or age standards for the issuance of employment certificates contained in this section.”

Section 19 of the last referred statute, as amended, as found in Burns' (1948 Repl.), Section 28-519, in part, provides:

“It shall be unlawful for any person, firm or corporation to hire or employ or permit any minor between the ages of fourteen [14] and eighteen [18] years to work in any gainful occupation until such person, firm or corporation shall have secured and placed on file in the office of such person, firm or corporation, a certificate issued by the issuing officer, as hereinafter defined, of the school corporation in which said minor resides. Upon the request of any employer who desires to employ a minor who represents his or her age to be between eighteen [18] and twenty-one [21] years, it shall be the duty of the issuing officer to issue a certificate to such minor. Upon the request of any parent or guardian, the issuing officer shall have authority to issue permits for temporary absences for causes other than employment. The issuing officer in all cities and incorporated towns having boards of school trustees shall be the superintendent of the schools of such city or such incorporated town or some person designated by him in writing so to act, and in all other school corporations the issuing officer shall be the county superintendent of schools or some person or persons designated by him in writing so to act: Provided, That no school superintendent shall designate an issuing officer without the approval of the state attendance officer. In case of a vacancy in the superintendency of the schools of any such city or incorporated town, then during such vacancy, the president of the board of school trustees or the president of the board of school commissioners

of such city or incorporated town or someone whom he shall designate, shall be the issuing officer thereof. No certificate shall be required for any minor between the ages of fourteen [14] and sixteen [16] years to perform farm labor or domestic service or to perform the duties or to work or act as a caddie to any person or persons who are engaged in playing the game of golf or as a carrier of newspapers, during the hours when schools of the school corporation in which such minor reside[s] are not in session. The issuing officer of such school corporation or the person authorized by him in writing so to act shall issue such certificate only to a minor whose employment is necessary and not prohibited by law, and only upon receipt of the following four documents herein referred to as proof of age, proof of physical fitness, proof of schooling, and proof of prospective employment.

“Proof of Age. The issuing officer shall require one of the following documents in the order named:

“(a) A birth certificate or duly attested transcript thereof issued by the registrar of vital statistics or other officer charged with the duty of recording births.

“(b) A baptismal certificate or transcript of the record of baptism, duly certified, showing the date of birth and place of baptism of the minor.

“(c) A bona fide contemporary record of the minor’s birth, comprising a part of the family record of births in the Bible, or other documentary evidence satisfactory to the division of labor, such as a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, a passport showing the age of the child, or a life insurance policy: Provided, That such other documentary evidence has been in existence at least one [1] year and in the case of a life insurance policy at least four [4] years: and, Provided further, That a school record or a parent’s, guardian’s or custodian’s affidavit or other written statement of age shall not be accepted except as specified in paragraph (d).

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“(d) A sworn statement by a public health physician or a public school physician or by the superintendent of schools in all cities and incorporated towns having boards of school trustees and in all other school corporations by the county superintendent of schools, stating in his opinion, the physical age of the minor. Such statement shall show the height and weight of the child and other facts upon which the opinion of such physician or superintendent is based. A parent’s, guardian’s or custodian’s signed statement as to the age of the child, and the record of the age as given by the register of the school first attended by the child, or in any school census, if obtainable, shall be submitted with the physician’s or superintendent’s statement showing physical age.

“The officer issuing the certificate for a minor shall require the evidence of age stated in paragraph (a) in preference to that specified in any subsequent paragraph and shall not accept evidence of age permitted by any later paragraph unless he shall receive and file evidence that the proof of age required in the preceding paragraph or paragraphs can not be obtained. It shall be the duty of the custodian of such vital statistics to issue the transcript of the birth certificate herein provided for.

“Proof of Physical Fitness. The physical fitness of any minor herein contemplated to be employed in any designated occupation shall be proved by a certificate signed by a school health officer or public health officer, stating that the minor has been examined by him and that in his opinion such minor has reached the normal physical and mental development of a minor of its age, and is in sound health, and able to be employed in the occupation in which the minor intends to engage.

“Proof of Schooling. The requisite, prescribed schooling of any minor herein contemplated shall be proved by a certificate signed by the superintendent, principal or teacher of the school last attended, showing that the minor can read and write correctly sentences in the English language, and showing that he has satisfactorily completed the eighth grade of the common

schools, or its equivalent. In case such certificate can not be obtained, then the superintendent of schools in cities or incorporated towns having boards of school trustees and in all other school corporations the superintendent of schools of the county in which such minor resides shall examine such minor to determine whether he can meet the educational standard herein specified, and shall file in the office of the issuing officer a statement setting forth the result of such examination: Provided, That proof of such educational qualifications shall not be required when the work is to cover only the whole or some part of the period when common schools of the school corporation in which the minor resides are in vacation, or hours when such schools are not in session: and, Provided further, That proof of such educational qualifications shall not be required for minors sixteen [16] years of age or older except that the grade completed shall be placed on the employment certificate.

“Proof of Prospective Employment. The prospective employment of any minor herein contemplated shall be proved by a written statement signed by the person for whom the minor expects to work, setting forth the nature of the work which the minor intends to perform.

“Immediately upon the termination of the minor’s employment, the employer shall notify the issuing officer in writing of that fact and the date of such termination, upon a blank form attached to the employment certificate; and the parent, guardian or custodian of such minor shall, within five [5] days, exclusive of Sundays, and holidays, return such minor to school. It shall be unlawful for the issuing officer to issue a subsequent certificate until he shall have received a notice of the termination of the minor’s employment as herein provided. It shall be unlawful for any employer to re-employ any such minor without first obtaining a new certificate.”

From the foregoing provisions of the statute, I am of the opinion the authority for the issuance of work permits is

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vested in the local school officials therein designated, and not in the State Board of Education. The necessity of the issuance of such a certificate in each case must be found to exist by the issuing officer upon his being furnished with all the other detailed information and documents specified in the statute.

While the foregoing section of the statute further provides "employment certificates shall be issued in such form and under such rules and regulations as shall be adopted from time to time by the Division of Labor and the State Board of Attendance, and which are not inconsistent with the provisions of law * * *," such would not constitute authority for the Commission on General Education of the State Board of Education, the Division of Labor or the State Board of Attendance to adopt rules and regulations, or approved programs, inconsistent with the stated requirements of said statute or to waive compliance with the same.

While Indiana has a later compulsory education statute (Acts of 1953, Ch. 249, as found in Burns' (1957 Supp.), Sections 28-505k to 28-505t), under the first section of said statute children are excepted from the provisions of said statute who are excused from school attendance under and by virtue of any other law of this state. Therefore, the above quoted provisions of the statute remain in full force and effect and are not repealed by the 1953 statute for the reason there is no conflict between said statutes in this respect.

From the foregoing, I am of the opinion the Commission on General Education of the State Board of Education does not have authority to adopt the foregoing program but that the granting of work permits to children within the stated qualifications is the function and duty of the issuing officer prescribed in the statute and to be made in each case presented in accordance with the stated requirements of said statute.