Mrs. Copeland

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~~149-31-122~~

4 SEP 24 1956

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MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Opinion of the Attorney General of Kentucky on racial integration of its public schools.

This is in response to your memorandum of September 19, 1956, requesting our analysis of the above opinion, a copy of which is attached. You will note that the opinion is in the form of a letter to the Superintendent of Schools of Webster County, dated September 13, 1956, involving the Clay school. Apparently, the same ruling has been given to the Union County School Board with respect to the Sturgis school.

It appears from the letter that in 1955 the Board of Education of Webster County, in supposed implementation of the Supreme Court decisions in the School Segregation Cases, appointed a committee of white and Negro citizens, "to study the proper procedure for desegregation" in that county "..but has not yet made its report." The question presented to the Attorney General, according to his letter, was--

"whether two Negro pupils who have presented themselves for enrollment at the school at Clay (heretofore attended solely by white children) are entitled to enrollment without action by your Board of Education."

The conclusion reached by the Attorney General is that, under the second opinion of the Supreme Court in the Segregation Cases (Brown v. Board of Education, 349 U.S. 294), a Negro child has no right to attend a school for white pupils "without some sort of action having been taken by the school board" because otherwise "the orderly process" for integration authorized by the Supreme Court "would be completely destroyed." Integration cannot begin, he says, without action taken by the school board "either voluntarily or upon orders of a court." The only available remedy for failure of the board to take the necessary steps toward integration is for parents to seek judicial relief. The Attorney General cites in support of his conclusions the decision of the United States District Court for the Western District of Kentucky in Willis v. Walker, 136 F. Supp. 177 (Nov. 29, 1955), involving the public schools of Adair County, Kentucky. Finally, he suggests that since the school board had adopted no plan whatever a court might well hold that it had failed to act with "the deliberate speed" required by the Supreme Court.

1. We believe it would be helpful to preface our analysis of the Attorney General's opinion with a statement of the underlying facts so far as they are available to us from a study of the New York Times which has undertaken a rather complete coverage of the situation.## The United States Attorney has also sent us the attached clipping from the Louisville Courier Journal of September 20, 1956. The two schools involved are the consolidated grade and high school at Clay, Kentucky, in Webster County, and the high school at Sturgis, Kentucky, in Union County. Sturgis is a town of about 5,000 population, Clay of about 1,500. They are only 11 miles apart and are located some 170 miles west of Louisville. According to the Louisville attorney of the NAACP, some seven Negro students applied for admission to the white high school at Sturgis and were enrolled. He is reported to have said that they "were allowed to register and to attend classes at Sturgis. Only when the White Citizens Council became active and started agitating did the school board vote to bar them." In Clay three Negro pupils are involved; apparently they were not enrolled but were accepted in the white school.

The Negro pupils attended the schools under the protection of state troops. After the Attorney General rendered his opinion to the Webster County Board of Education (Clay), the board met and ruled that the three Negro children had been illegally entered in the white school at Clay. When they attempted to enter the school on September 17th they were met by the principal at the door and she read to them a letter from the superintendent advising her of the board's ruling. With respect to Sturgis, the Board of Education of Union County asked the Attorney General for an opinion, advising him that, like Webster County, it had also appointed an integration committee and that the committee had not yet reported. The Attorney General replied by telegram to the effect that his Webster County opinion was applicable. The board then voted on September 18th to deny Negro students admission to the Sturgis high school, and on September 19th when they appeared at the school they were met by the principal who read them a letter he had received from the superintendent to the effect that the board of education had ruled that they had been illegally entered in the white high school. It is further reported that the Negro students involved in Sturgis will seek judicial relief, and that a suit has been filed with respect to the Clay students. The complaint alleges that the "board has refused to integrate the schools within its jurisdiction, although there are no local legal problems preventing immediate integration." Court officials are reported to have said that no date had yet been set for hearing of the suit.

2. It seems clear that the Attorney General's opinion was designed to give the school boards involved a way to appease the local opposition to the admission of Negro children to the Clay and Sturgis schools. This appeasement took the form of excluding them from the schools after they had been admitted. It is not clear whether the boards initially

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##The Times has carried front-page accounts in its issues beginning with September 7, 1956.

authorized their admission. It would seem, if the facts appearing in the opinion are to be taken as true, that the boards did not take such action. But whether or not that was the case, the boards have now voted to keep the children out on the basis of the Attorney General's opinion.

Under Kentucky law the management and control of county schools are vested in the county boards of education. Kentucky R S 1955, §§ 160.160, 160.290. How the schools are to be run is for the school boards to decide and not for the patrons of a school. Casey County Board of Education v. Luster, 282 S.W. 2d 333 (Ky., 1955); Hines v. Pulaski County Board of Education, 292 Ky. 100 (1942). It cannot be denied, as the Attorney General held, that the county boards are appropriate bodies in Kentucky having "the primary responsibility for elucidating, assessing, and solving the problems" that may be involved in the elimination of racial discrimination in public schools. Brown v. Board of Education, 349 U.S. 294, 299. Accordingly, I do not believe that any exception under ordinary conditions could be taken to a school board's decision refusing to admit Negro children to a white school before it had come up with a plan of integration. If the parents of the children are dissatisfied they are entitled, as the Attorney General states, to seek judicial redress. This was precisely the case in Willis v. Walker, 136 F. Supp. 177, supra, cited by the Attorney General.

That case involved the grade and high schools of Adair County, Kentucky. On July 15, 1955, a group of Negro parents petitioned the Adair County Board of Education to abolish segregated schools. On August 29, 1955, a number of Negro children "were received and registered in both the high and elementary schools of Adair County." On August 30, 1955, the principals of these schools, acting under the orders of the superintendent and the Board of Education "ejected the plaintiffs and all Negro children who had previously registered." According to the court (p. 180), "The record discloses that since that time white children have been admitted to the schools" and it was clear "that the only reason these plaintiffs and those for whom they plead were denied was because they were Negroes." The court held that the Negro high school children had to be admitted by February 1, 1956, and that integration in the grade schools should be effective with the beginning of the school year in August or September 1956. The court further noted that whatever plans the school authorities had for integration were so vague and indefinite "that they cannot be considered as lawful grounds for delay of the mandate laid down by the Supreme Court." The court stated that while it did not question their good faith, that "alone is not the test. There must be 'compliance at the earliest practicable date.'" (p. 181) 2/

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2/ According to Southern School News, Feb. 1956, p. 7, col. 4, compliance with the first step of the court's order was effected before February 1956.

In the instant case the Attorney General told the school board rather plainly that it was likely to lose in court because it had adopted no plan for integration whatever. Nevertheless, he felt that the board had the legal authority to exclude Negro children, in its discretion, until it came up with a plan for integration. It is unfortunate, of course, that the Attorney General gave the support of his opinion to permit the school boards a means of yielding to local pressures. We think that on the facts as known to us, and presumably to the Attorney General, he might just as well have told the school boards that having failed to formulate a plan of desegregation over a period of many months it was their duty under the decree of the Supreme Court to open the doors of their school to all pupils without regard to their race rather than, without valid reasons, compel Negro pupils to resort to the courts for redress of their clear constitutional rights. Such a forthright statement by the Attorney General, backed by the Governor if necessary, might have had a powerful and beneficial effect.

On the other hand, as we see it, the Attorney General can be criticised for his judgment as to how the schools boards might legally deal with the situations with which they were confronted. He did not expressly advocate non-compliance with the decree of the Supreme Court or challenge its force as the law of the land. However, in effect it would appear that he sanctioned a course which would require court action in every case in which a school board did nothing affirmative to implement the Supreme Court's decree. Faced with a choice between principle and expediency, he appears plainly to have selected the latter course.

Frederick W. Ford
Acting Assistant Attorney General
Office of Legal Counsel

Attachments