

OPINION
52-28

September 29, 1952 (OPINION)

EDUCATION

RE: Age of Children for Admittance

Yours of the 26 inst. asking for an interpretation of this section has been received. (section 15-4701, 1949 Supp.)

So far as we are able to ascertain, our court has not passed on this section. It is our opinion, however, that it does not prohibit the attendance of a child who is not of the age of six years and will not attain that age "by midnight, December thirty-first." The law simply means that if a child shall attain the age of six years on or before midnight on December thirty-first, he must be admitted to the school. It does not mean that, if the school board of the district is willing, a child who will not attain the age of six years before that date, if, in the judgement of the school board members, such child is sufficiently mature and intelligent to benefit by school attendance, must not be admitted to attend school.

The matter is within the discretion of the school board. See Batty v. Board of Education, 67 N.D. 6 at page 9. (269 N.W. 49) at page 9, in 67 N.D. the Supreme Court quotes a former opinion of the court as follows: "As a general rule, the decision of a school board, if exercised in good faith, on matters affecting the good order and discipline of the school, is final so far as it relates to the rights of pupils to enjoy school privileges and the courts will not interfere with the exercise of such authority unless it has been illegally or unreasonably exercised."

Therefore, it is the opinion of this office that your specific questions must be answered thus:

1. Does the above mentioned statute prohibit the enrollment of a child whose sixth birthday falls after December thirty-first of the current year"

Our answer is "No."

2. Does the county superintendent of schools have the power and authority, in rural schools, to prohibit the attendance of a child described in question one if the teacher and school board agree to admit such child?

Our answer is "No."

ELMO T. CHRISTIANSON

Attorney General