

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

April 26, 2019

Gene Barton, Esq.
Chickasaw County Prosecuting Attorney
Post Office Box 147
Okolona, Mississippi 38860-0147

Re: Legitimate Home Instruction Program

Dear Mr. Barton:

Attorney General Jim Hood has received your opinion request and has assigned it to me for research and reply.

Issues Presented

In your request, you provide:

As you are aware, I serve as County Prosecutor and Youth Court Prosecutor for Chickasaw County. We are finding that in a number of situations where truancy charges are filed against children and their parents that they take them out of school and enroll them in a home-schooling program. No oversight is done with respect to the home-schooling and I am not even sure that they are truly doing home-schooling.

Is there any type of oversight available for these individuals that desire to home-school their children and get them out of the school system?

Applicable Law and Response

The Mississippi Compulsory School Attendance Law, Section 37-13-91 of the Mississippi Code, requires all compulsory school age children to attend a public school or legitimate nonpublic school. One exception to this rule is if the child is being educated in a legitimate home instruction program. *Id.* In that case, the parent, guardian or custodian are required to provide a certificate of enrollment to the Mississippi Department of Education in accordance with Section 37-13-91(3). Our office has previously opined that this section "enumerates the only information that the State Board of Education may require be filed with the attendance officer." MS AG Op., White (December 18, 1991). Notably, Section 37-13-91(10) provides:

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Notwithstanding any provision or implication herein to the contrary, it is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the proper education and training for such child, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

Thus, the State Board of Education, local school districts, other state agencies and/or public entities do not have any regulatory authority or oversight over home school programs beyond the collection of certificates of enrollment by the Mississippi Department of Education. However, according to Section 37-13-91, "a legitimate nonpublic school or legitimate home instruction program shall be those not operated or instituted for the purpose of avoiding or circumventing the compulsory attendance law." Additionally, "(a)ny parent, guardian or custodian of a compulsory-school-age child subject to this section who refuses or willfully fails to perform any of the duties imposed upon him or her under this section or who intentionally falsifies any information required to be contained in a certificate of enrollment, shall be guilty of contributing to the neglect of a child and, upon conviction, shall be punished in accordance with Section 97-5-39." Miss. Code Ann. Section 37-13-91(5).

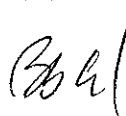
In 1995, our office was asked by a district attorney what constitutes legitimate home instruction. MS AG Op., Harkey (June 28, 1995). We noted that there is no statutory definition of a legitimate home instruction program and further stated that "this term needs to be defined by the Legislature in order for the statute to be enforced." To date, this portion of Section 37-13-91 has not been amended to further define "legitimate home instruction program." Ultimately, whether a child is being educated in a legitimate home instruction program is a question of fact to be determined by the proper court. See MS AG Op., Clark (January 10, 1997).

If we may be of further service, please let us know.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Beebe Garrard
Special Assistant Attorney General