

SCHOOLS: Judgment for damages for breach of contract for teaching school must be paid out of the teachers' fund.

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May 4, 1935.



Honorable Lloyd W. King
State Superintendent of Public Schools
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"The school board for the Jamestown School District No. 11, Moniteau County, has asked this office to advise them the proper fund from which to pay teacher salary judgments.

"The chief facts applicable to this question as reported to this office are as follows:

"The school board made an oral agreement to employ a certain teachers for the 1933-34 school year. The verbal agreement was entered into record and accepted in the minutes of the board. The school board later employed other teachers and denied there was a contract with the first teachers employed. These teachers then brought suit in the circuit court, which held there was sufficient showing in writing to justify it to find that there was a contract and gave the plaintiff judgment for damages for the full amount of the contract salary. The case was appealed, but the Kansas City Court of Appeals sustained the

lower court's findings.

"Bailey vs. Jamestown School District, No. 11, Moniteau Co. Kansas City Court of Appeals - December 3, 1934, 77 S.W. 2d 1017.

"The school board was enjoined from paying the teachers who were employed to replace the first teachers who were denied contracts. To date neither group of teachers has been paid.

"The school board probably has enough money in the teachers fund to pay only one group of teachers. The incidental fund is practically depleted.

"Questions:

1. When the court has granted judgment for damages to teachers on contract, is it legal for the judgment to be paid from the teachers' fund? If not, shall said judgment be paid from the incidental fund? (Section 9312, R.S. 1929 requires teachers to be paid from the teachers' fund. Also Section 9316, R.S. 1929 prohibits the board from issuing warrants to teachers except for services rendered. Section 9233, R.S. 1929 requires services rendered before teachers can be paid).
2. If the law requires damages to be paid from the incidental fund, what shall be the school board's procedure when such funds are exhausted? (Section 9233, R.S. 1929 seems to limit the school board in its expenditures to the amount actually provided for the school year and prohibits its use of the succeeding year's revenue.)
3. If not possible to pay teacher contract judgments from either the teachers or incidental fund, is it mandatory for the board to make a tax levy for the specific

purpose of paying this judgment?

I shall appreciate receiving an opinion on this problem at your earliest convenience."

The judgment about which you inquire was obtained by Nellie Bailey against the Jamestown School District No. 11, Moniteau County, Missouri. The defendant appealed and the judgment was affirmed by the Kansas City Court of Appeals in 77 S.W. (2d) page 1017. It is plain from a reading of said case that the judgment obtained was for breach of a contract for teaching school. Judge Shain, speaking for the Court, in stating the nature of the case, at page 1017 said:

"In this action the respondent, hereinafter designated as plaintiff, brings this action for damages against the appellant, hereinafter designated as defendant, to recover \$480 for alleged breach of contract for teaching school."

The question about which you inquire and which now confronts us is - out of what fund should a judgment for damages for breach of contract for teaching school be paid? We do not deem it necessary to set out the statutes in regard to the payment of district indebtedness for the reason that we know you are familiar with them. Suffice to say that all moneys for teachers' wages must be drawn on the teachers' fund; all moneys used in the purchase of a site, erection of a building thereon and furnishing the same must be drawn on the building fund; and all other expenses must be paid out of the incidental fund.

The case of State ex rel. v. District School Board, 97 Mo. App. 613, was a proceeding by mandamus to compel the board of directors of District No. 2, Township 50, Range 32, in Jackson County, Missouri, to draw a warrant for payment of a judgment obtained by R.O. Kerby, Relator, against said district for breach of contract. The writ of mandamus did not state the nature of the contract for the breach of which judgment was given. The court held that the board could not be compelled by mandamus to issue a warrant for payment of said judgment for the reason that it did not appear out of what specific fund said judgment should be satisfied. At pages 618-619 the court said:

"Under the prohibitory mandates of the statute, a board of directors may not order, nor a county

treasurer pay, a warrant unless it be specified therein whether or not the claim of indebtedness be either for services as teacher, material purchased for use of the school, or for labor in the erection of a schoolhouse. No claim against a school district payable out of any one of the specified funds can arise except out of a contract and therefore the presentation of a claim whether it be in the form of a judgment or otherwise, which shows no more than that it arose on a contract without specifying the subject-matter of such contract is too vague and indefinite to justify the board of directors in ordering a warrant to be drawn therefor on any specified fund. How can it (the board) in such case tell which is the appropriate fund on which to order the warrant? The claim may be for teachers' wages, for material purchased for use of the school, or services of a janitor, or for material, or labor in the erection of a schoolhouse, and yet arise out of 'breach of contract.' The board of directors is not at its peril required to guess the fund against which it is to order the warrant drawn for the amount of the claim. Neither of these specified funds can be applied to the payment of a claim which the statute requires to be paid out of one of the others. If the writ had stated the nature of the contract for the breach of which the judgment of the justice was given, then in all probability we would be able to determine whether or not it was the duty of the respondents to order a warrant to be drawn on any specific fund, but in the absence of such a statement we are unable to say they have neglected any particular duty."

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It will be noted, the Court said, that if the writ of mandamus had stated the nature of the contract for the breach of which the judgment was given, they would have in all probability been able to determine whether or not it was the duty of the board to order the warrant to be drawn on a specified fund.

In the above case, the court denied Relator's contention that a claim merged into a judgment must be satisfied out of the "incidental fund". At page 619 it was said:

"We are unable to yield our assent to the relator's contention that since his claim is merged into a judgment and thereby becomes extinguished, it results as a legal consequence that the judgment must be satisfied out of the 'incidental fund.' Suppose the claim arose out of a breach of contract for the payment of teachers' wages, or for materials or services for the erection of a schoolhouse, can it be that such claim because merged into a judgment becomes payable out of the 'incidental fund'? If this is so, what becomes of the statutory requirement that each indebtedness of the district must be paid out of the appropriate fund? Can an indebtedness for teachers' wages or for services in erecting a schoolhouse be made to become a charge against the 'incidental fund' by converting it into a judgment? The bare statement of this proposition furnishes its own refutation."

CONCLUSION

In view of the above, it is the opinion of this department that a judgment for damages against a school district for breach of contract for teaching school must be paid out of the teachers' fund.

Yours very truly,

J.E. TAYLOR,
Assistant Attorney-General.

APPROVED:

Attorney General