

SCHOOLS: Donations or gifts to teacher alid.

May 10th, 1939.

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21

Mr. Donald B. Dawson,
Prosecuting Attorney,
Bates County,
Butler, Missouri.

Dear Mr. Dawson:

This will acknowledge receipt of your letter of April 14th last, requesting an opinion from this office, from which letter we quote as follows:

"I have been asked for an opinion on the legality of donations or gifts made by the board of education of the school district to a teacher or teachers. One school board composed of three members voted to give the teacher of the school \$10.00 last year as a Christmas present. Some of the members of the school district objected to that as being unlawful. I took the position however that a school board had the authority to do such an act under the circumstances of the case although I did not believe the school board could engage in any such course of action over a period of time.

Mr. Donald B. Dawson

- 8 -

May 10th, 1939.

The second situation is a little more complicated. The board of a consolidated school district met this last week and voted to raise the salaries of several of the teachers and also passed a motion to allow a bonus to each of the teachers for the last years school term. This bonus amounts of \$5.00 per teacher and \$10.00 for the superintendent. A rather serious objection has been raised to this proposition but I again took the position that the school board had authority to do this although I must confess that I was not at all sure I was right. I should like your opinion on the power of the school board to make gifts or donations such as those mentioned above."

Answering your questions in the order stated, we say as follows:

I.

A school district is a public body created by the Constitution of the State, and is likewise a political corporation or subdivision of the State within the meaning of the Constitution. The supervision of a school district is vested in the Board of Directors, whose duties and obligations are such as are specifically prescribed by law. The support of public schools is derived solely from taxation or public money.

Mr. Donald B. Dawson

- 3 -

May 10th, 1939.

The aforesaid axiomatic principles of law constitute the basis for determining the validity of the Christmas present or gift made the teacher in question.

A thorough research of the present statutes or legislative enactments relative to schools fails to show any provision whereby the Board of Directors can give away any part of the public school funds of the district for any purpose. In fact, even though it could be said that the Legislature either by express enactment, or by implication, permitted such a donation or gift, such authorization would be void. The Constitution, Article IV, Section 47, provides in part as follows:

"The General Assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established to lend its credit, or to grant public money or thing of value in aid of or to any individual * * * * *".

In the case of Hitchcock v. ^{City} City of St. Louis, 49 Mo., 484, l. c. 483, the ~~court~~ court undertook to donate public money to the support of a private orphan asylum, the court said:

"The donee is a mere private institution, not under the control of the city and having no connection with it. If the tax-payers' money can be taken and given to it, it

Mr. Donald B. Dawson - 4 - May 10th, 1939.

may be also to any other private corporation, or it may be distributed gratuitously to individuals. It is clear that the charter confers no such authority and we think, therefore, that the judgment should be affirmed. "The other judges concur."

When and while the teacher you mentioned was performing the services called for in her 1938 contract and for which she was being paid the amount named in her teacher's contract, the school district was no further obligated to her for any additional sum of money whatever, nor was she in any way under the control or obligated to the district save as to satisfactory performance of her duties as teacher.

Although the directors might justify the giving of the present in question upon some social or personal basis, yet such is not sufficient. The directors must show a legal basis, and this they can not do. Consequently, the giving away of school money in question as a present constitutes an unlawful use of school funds on the part of the School Board.

II.

Relative to your second question, we call attention to Section 9209 as amended by Laws of Missouri, 1933, page 387, concerning teachers contracts, which reads in part as follows:

"The contract * * * * * shall specify the number of months the school is to be taught and the wages per month to be paid; * * *."

May 10th, 1939.

It can thus be seen that a teachers contract must be definite and certain as to the amount a teacher is to receive thereunder for services.

In the case of Rudy v. School District, 30 No. App. 113, l. c. 117, the court in speaking of the powers of a School Board said:

"There is no question that a school district is a quasi corporation, and that the powers of its corporators and directors are prescribed and limited by statute (Buchanan v. School District, 25 No. App. 85), and, also, it may be added, by such provisions of the constitution of the state as are self-enforcing. Nor is there any doubt that a person entering into a contract with a school district, through its directors, must, at his peril, take notice of the limited powers of the directors, and if he enters into a contract with them in excess of their powers, no recovery can be had by him thereon. Cheeney v. Brookfield, 60 No. 53."

Hence, in view of the fact that a school board in paying a teacher is limited to a definite amount, which must be set forth in the teacher's contract, any payment of a greater amount, whether it be designated as a "bonus" or otherwise, would be no thing more nor less than making a gift of the school funds in the amount you name to the respective recipients, and hence, are invalid for the reasons given in the above paragraph one.

Mr. Donald B. Dawson - 6 - May 10th, 1939.

On the other hand, if the so-called "bonus" should be classed as a part of the teachers compensation for the year in question, by reason of it being understood at the beginning of the school year that a "bonus" in a then ~~un~~ascertained amount would be paid, it would not avail anything for the reason that such understanding would have rendered the contract indefinite and uncertain as to the monthly wage or total amount to be paid the teacher, which would be contrary to the provisions of the aforesaid statutes.

Hence, our conclusion is that the payment of a so-called "bonus" was unlawful.

Very truly yours,

J. W. BUFFINGTON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General

JWB RV