

SCHOOLS: School board may contract for services  
ATTORNEY AND CLIENT: of attorney, with attorney fee to be  
paid on percentage basis.

July 26, 1950



Honorable Ted A. Bollinger  
Prosecuting Attorney  
Shelby County  
Shelbyville, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this office,  
which reads:

"An opinion is requested of your office of  
the following state of facts:

"An audit of the books and records of the  
treasurer's office of Shelby County re-  
flected a shortage of some \$4470.00 in  
the school funds. This shortage is pro-  
portionate over all school districts, the  
approximate figure to the Clarence Special  
School District being \$2300.00. A civil  
action has been instituted against the  
surety on the treasurer's bond for this  
shortage. The Clarence School District  
has employed a special counsel to assist  
the plaintiff in the prosecution of the  
civil case, promising him a percentage  
fee out of the amount due the school  
district. The issue therefore is whether  
or not such school district can legally  
employ counsel and pay him in the manner  
so stated out of the school funds due said  
district."

We are enclosing a copy of an opinion rendered by this  
office under date of November 14, 1946, to Mr. Marshall Craig,  
a prosecuting attorney in the state, which we believe is author-  
ity for holding that the courts have recognized the power of  
school boards to employ attorneys when situations arise which  
necessitate the board having the services of an attorney and  
paying for said services out of public school funds.

Since a school board can contract for the services of an attorney, the principal requirement to make such employment legal is that the contract of employment must comply with the provisions of Section 3349, R.S. Mo. 1939, which is set out in the copy of the opinion which we are enclosing.

It is a common practice among attorneys of this state, if not of every state, to contract for their fee with clients on a percentage basis. Such contracts between attorney and client are not illegal or against public policy. As a matter of fact, such contracts are authorized by law in this state, for Section 13338, R.S. Mo. 1939, in part, provides:

"In all suits in equity and in all actions or proposed actions at law, whether arising ex contractu or ex delicto, it shall be lawful for an attorney at law either before suit or action is brought, or after suit or action is brought, to contract with his client for legal services rendered or to be rendered him for a certain portion or percentage of the proceeds of any settlement of his client's claim or cause of action, either before the institution of suit or action, or at any stage after the institution of suit or action, \* \* \*"

Prior to the repeal of Sections 10663 to 10667, R.S. Mo. 1939, the Legislature had authorized the contracting for services of an attorney to collect school money and the payment of the attorney fee on a percentage basis. Under Sections 10665 and 10666 the State Board of Education was empowered to employ an attorney in each Congressional District to prosecute suits to recover state school moneys diverted to an unlawful use. The attorney so employed, who prosecuted all such claims to final judgment in favor of the state or county, was to be compensated by receiving a per cent of the sum collected.

Reference is made to the above sections, although now repealed, for the purpose of showing that the Legislature has heretofore recognized that paying an attorney on a percentage or contingent basis out of school moneys to be collected was proper.

In the absence of any legislative enactment specifically permitting a school board to contract for the services of an attorney and pay him on a percentage basis from money to be collected, we see nothing reprehensible in this type of contract inasmuch as generally between attorney and client such a contract is proper.

Honorable Ted A. Bollinger

-3-

CONCLUSION

It is therefore the opinion of this department that a written contract entered into between a school board and an attorney for services to be rendered in the future by the attorney on behalf of the school board would be a valid contract, even though the provision thereof relating to payment of the attorney fee would be on a percentage basis rather than on a fixed fee basis.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General