

SCHOOLS: TOWNSHIP TRUSTEES:

Township trustee has no authority to disburse school funds of his township after formation of consolidated district under provisions of Section 1, Laws of 1947, Vol. II, Page 371; must turn over all such funds in his hands to treasurer of enlarged district, and is not entitled to a commission for such turnover.

July 13, 1950

Mr. R. M. Gifford  
Prosecuting Attorney  
Sullivan County  
Green City, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of recent date requesting a legal opinion of this department. Said request reads as follows:

"On the 23rd day of August, 1949, an election was held in the northwest part of this County for the purpose of enlarging and bringing together several districts in Sullivan and an adjoining County. As a result of that election Consolidated District No. 4 was formed and the new board of that district was organized and a treasurer thereof elected on September 29, 1949.

"Sullivan is a County operating under township organization and the Trustee of a township from which part of the new school district was carved, received through the County Treasurer monies for school purposes including districts within the new enlargement and later disbursed them to the treasurer withholding therefrom his commission as trustee. Now the Treasurer of Consolidated District No. 4 makes demand from said Trustee the amount of such commission withheld on the theory that the disbursement should have been from the Treasurer directly to him as Treasurer rather than to the Trustee of that township.

"Will you please advise as to whether the Trustee should account to the Treasurer for the commission withheld in his official capacity."

Section 10400, Laws of Missouri, 1945, page 1708, provides that the county treasurer, and in counties operating under township organization the township trustee, shall be the custodian of the school moneys belonging to such township and reads as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by this chapter, except in counties having adopted the township organization law, in which counties the township trustee shall be the custodian of all school moneys belonging to the township, and be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; and on his election, before entering upon the duties of his office, he shall give a surety company bond, with sufficient security, in the probable amount of school moneys that shall come into his hands, payable to the State of Missouri, to be approved by the county court, and paid by the county court out of the county common school funds, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over the amount of the security available in the bond; and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury: Provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

The facts as given in your letter do not indicate whether the township trustee received the school money before or after the formation of the new district. In the event the receipt of the money was before the formation of the enlarged district, then the payment was proper. The provisions of Section 10400 make it the duty of the township trustee in counties operating under township organization to be the custodian, and to disburse all school moneys of his township upon the written order of the clerk of such township.

In the event the County Treasurer of Sullivan County paid the school moneys in question to the township trustee of one of the townships included in the enlarged district subsequent to the formation and the election of officers of said school district, such payment was not only improper but it was clearly a violation of Section 11, Laws of Missouri, 1947, page 376, which section superseded Section 10400, supra, insofar as the custody and disbursement of school funds in the hands of the township trustee are concerned. Said section reads in part as follows:

"\* \* \* All funds in the hands of the county or township treasurer to the credit of the various districts composing such enlarged district, shall be immediately transferred to the credit of the treasurer of such enlarged district, \* \* \*"

We are not particularly concerned here with whether the custody of the school funds by the township trustee were legal or illegal, since this would be a question of fact as to when the money was paid, and whether it had been paid to the proper officer who was then legally authorized to receive and disburse it according to law, but we are very much concerned with the proposition as to whether the action of the trustee in withholding a part of school funds turned over to the treasurer of the enlarged district was legal or illegal, and as to whether the funds withheld should be paid over to the treasurer of the enlarged district, and it is to this phase of the question presented that we will direct our remarks hereafter.

Under the provisions of Section 10400, supra, for the receipt and disbursement of the school money of the different districts of his county, the county treasurer shall be allowed such compensation as the county court may deem advisable, but not to exceed one half of one per cent of all school moneys disbursed by him, such compensation to be paid out of the county treasury. This section further provides that in those counties having adopted township organization under statutes pertaining thereto, that the township trustee is the proper officer to receive and disburse all

school moneys of his township and in so doing he shall be subject to corresponding duties as a county treasurer in a county not operating under township organization.

For his services in this connection a county treasurer is entitled to receive the compensation fixed by section 10400, supra, but no provision is made for paying the township trustee any compensation for performance of his duties, and it does not follow that he will receive the same compensation as the county treasurer, in the absence of express statutory provisions authorizing the payment of such compensation.

While the township trustee is not authorized to receive compensation under the provisions of Section 10400, supra, we contend that he is not precluded from receiving compensation, and that for the receipt and disbursement of the school moneys of his township he may be allowed compensation under the provisions of another statute.

Section 13987, Mo. R.S.A. 1939, lists the officers and fixes the compensation each is entitled to receive in those counties operating under township organization and reads as follows:

"The township clerk, as clerk, the township trustee, as trustee, members of the township board, and judges and clerks of election, shall each receive for their services two dollars and fifty cents per day: Provided, that the township clerk shall receive fees for the following, and not per diem, for serving notices of election, or each: For filing any instrument of writing, ten cents; for recording any order or instrument of writing, authorized by law, ten cents for every hundred words and figures; for copying and certifying any record in his office, ten cents for every hundred words and figures, to be paid by the person applying for the same; and provided further, that the township trustee as ex officio treasurer shall receive a compensation of two per cent for receiving and disbursing all moneys coming into his hands as such treasurer when the same shall not exceed the sum of one thousand dollars and one per cent of all sums over said amount."

While this section does not specifically refer to the township trustee's fees for disbursing the school moneys, it appears that the language of the statute "for receiving and disbursing all moneys coming into his hands," is sufficiently broad enough to include compensation for disbursing school funds. Our contention is further substantiated by the holding of an official opinion of this department furnished the Honorable Forrest Smith, State Auditor of Missouri, and bearing date of July 9, 1947.

In said opinion it was held that the compensation of a township trustee and ex officio treasurer of a county operating under township organization is payable out of the general revenue fund of the township and that his commissions are based on the total amount of all funds received and disbursed and are to be calculated on the basis of two per cent of the first \$1000.00 of such total and one per cent balance of such total. We are enclosing a copy of this opinion for your consideration.

We assume that the "disbursement" for which the trustee claims compensation refers to the turning over of the total amount of the funds in his hands to the treasurer of the enlarged district. If we are to be guided by the interpretation placed on the various sections of the statutes by the township trustee, then he will no doubt be entitled to whatever fees that were claimed and withheld by him. However, we cannot agree with his interpretation of such statutes, and contend that under no strained interpretation of any statute was there a "disbursement" of the funds in question for which the trustee was entitled to receive commission particularly under the provisions of Section 13987, supra.

According to the definition found in Webster's New International Dictionary, the word "disburse," means to pay out; to expend, usually from a public fund.

Here there was merely a change in custody of the funds from the trustee to the treasurer of the enlarged district, the funds were not paid out, or spent, but were still intact and in the custody of the proper officer, in the treasury, and undisbursed.

In this connection and to support our theory as above stated we desire to call attention to the case of: State ex rel. Thompson, State Treasurer vs. Board of Regents for Northeast Missouri State Teachers College, 264 S.W. 698, at l.c. 701, the court said:

"\* \* \* Certainly it cannot, under any rule of construction, be held that a payment into the state treasury of incidental fees received by the college is in any sense a disbursement. Even the tyro in the use of our mother tongue attributes no other meaning to the word than to pay out or expend. A payment into the treasury, therefore, cannot be so classified, as it simply effects a change in the custodian and the place of deposit of the fund."

Even though it were to be admitted the trustee had actually disbursed the school funds and was entitled to receive a fee for such disbursement, the facts do not indicate the amount of the commission claimed and withheld by him. No statute is cited by him as authority for the allowance of the claim and in the absence of such statutory provision he is not entitled to any commission, as a public officer's compensation for services rendered are not presumed to be due him in the absence of statutory provisions

allowing same. If the fees had been legally due he was not authorized by any statute to withhold them from the school moneys, as such fees were to be paid from the general revenue of the township and not from the school funds.

In the case of Sanderson vs. Pike County, 195 Mo. 598, involving a law and facts similar to those before us, the plaintiff, a county treasurer of Pike County sued said county to recover fees for disbursing the school funds of the county, the court said at l.c. 605:

"It is well-settled law in this State that the right to compensation for the discharge of official duties is purely a creature of the statute, and that the statute which is claimed to confer that right must be strictly construed. The right of a public officer to compensation is derived from the statute, and he is entitled to none for services he may perform as such officer, unless the statute gives it.\* \* \*"

The withholding of such commissions alleged to be due the township trustee was clearly illegal, and the treasurer of the new enlarged district is within his legal rights in demanding that the funds withheld be turned over to him at once, and that the treasurer of the enlarged district is in a position to institute legal proceedings against the defaulting trustee in an effort to recover said funds for his district if his demands are not complied with by such trustee.

#### CONCLUSION

It is therefore the opinion of this department that a trustee of a township in a county operating under township organization is the proper officer to disburse all school moneys belonging to his township received from the county treasurer of such county prior to the formation of an enlarged school district under the provisions of Senate Bill #307, Laws of Missouri, 1947, p. 370, Vol. II, where said district is composed of school districts located in said county and other districts in an adjoining county not operating under township organization. That for the receipt and disbursement of township funds including school funds, the township trustee shall receive for his services the commission provided by Section 13987, Mo. R.S.A. 1939, which is based upon the total amount of funds received and disbursed by him and is calculated on the basis of two per cent of the first \$1000.00 of such total and one per cent of the balance of such total.

That it is the further opinion of this department that after the formation of an enlarged district composed of school districts located in a county operating under township organization and other districts located in an adjoining county not operating under township organization, that the right of a trustee of a township in the former county to receive school funds of his township from the county treasurer of said county, to disburse, and to receive a commission for such disbursement ceases, and that it shall be the duty

of such trustee to immediately turn over all school funds of his township to the treasurer of the enlarged district. That such turnover of the funds is not a disbursement within the meaning of Section 13987, supra, and the trustee is not entitled to any commission for same and he may not withhold any part of said funds as commissions alleged to be due him but must account to the treasurer of the enlarged district for all of such funds in his hands.

Respectfully submitted,

**PAUL N. CHITWOOD,**  
Assistant Attorney General

APPROVED:

J.E.TAYLOR  
Attorney General

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