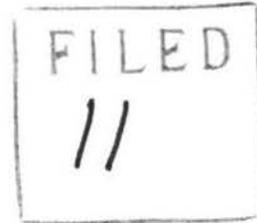


SCHOOLS: Any balance remaining in a school district's
TEXTBOOK FUND: free textbook fund after textbooks are fur-
TEACHERS' FUND: nished to all eligible pupils as required
in Section 170.051, RSMo 1969, as amended,
may be transferred to the teachers' fund as required by Section
165.011, subsection 2, RSMo 1969, without conflicting with the
restriction on commingling free textbook funds with the public
school fund as set forth in subsection 7 of Section 170.051,
Seventy-Sixth General Assembly, Second Regular Session.

OPINION NO. 11

March 6, 1974

Dr. Arthur L. Mallory
Commissioner of Education
State Department of Education
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Commissioner Mallory:

This official opinion is issued in response to your
request for a ruling on the following question:

"Was that portion of Section 165.011(2),
RSMo, repealed by implication that
requires school districts to transfer
any balance remaining in the free text-
book fund to the teachers' fund by
enactment by the Seventy-sixth General
Assembly of SCSSB 638, Section 170.051(7)
that forbids the commingling of textbook
fund moneys with the public school fund
referred to in Section 5, Article IX of
the Missouri Constitution?"

You indicate in your request that several school admin-
istrators in school districts in the state are concerned about
the proper procedure to follow in making their annual report
as required by Sections 165.111 and 162.821, RSMo 1969.

Section 165.011, pertaining to the funds each school dis-
trict must maintain to account for its school moneys, provides
as follows in subsection 2 thereof:

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". . . If a balance remains in the free textbook fund after books are furnished to pupils as provided in section 170.051, RSMo, it shall be transferred to the teachers' fund. . . ."

Your inquiry is whether this provision of Section 165.011 was repealed when the legislature enacted in 1972 the free textbook law--Sections 170.051 and 170.055. Specifically, you suggest a possible conflict between the above-quoted provision of Section 165.011 and subsection 7 of Section 170.051, which prohibits the commingling of textbook fund moneys with the public school fund:

". . . No portion of the public school fund referred to in section 5, article IX, constitution of this state, shall be used to pay the cost of textbooks under this section nor shall funds under this section be in any way commingled with the public school fund."

The public school fund is created by Section 5 of Article IX, which section provides as follows:

"The proceeds of all certificates of indebtedness due the state school fund, and all moneys, bonds, lands, and other property belonging to or donated to any state fund for public school purposes, and the net proceeds of all sales of lands and other property and effects that may accrue to the state by escheat, shall be paid into the state treasury, and securely invested under the supervision of the state board of education, and sacredly preserved as a public school fund the annual income of which shall be faithfully appropriated for establishing and maintaining free public schools, and for no other uses or purposes whatsoever."

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In McVey v. Hawkins, 258 S.W.2d 927 (Mo. Banc 1953), the Supreme Court of Missouri held unlawful a school district's transportation of children to and from their non-public schools because the income from the public school fund had been commingled with moneys from other sources and, therefore, it was impossible to determine that the transportation was being provided from funds other than income from the public school fund. We believe that subsection 7 of Section 170.051 was intended by the legislature to assure compliance with the McVey decision by prohibiting the commingling of foreign insurance tax receipts with income from the public school fund.

However, once the school district has furnished textbooks to all children entitled to them under Section 170.051, any excess funds could be transferred to the teachers' fund as required in Section 165.011. Arguably, there is no conflict between Section 165.011 and subsection 7 of Section 170.051 because the former applies only ". . . after books are furnished to pupils as provided in section 170.051, . . ." Section 165.011 only provides a method for utilizing unused textbook funds and does not purport to affect funds needed to carry out the purposes of Section 170.051.

Even if a conflict does exist between these two sections, Missouri law does not favor repeals by implication.

"It is the established rule of construction that the law does not favor repeal by implication and where there are two or more provisions relating to the same subject matter they must, if reasonably possible, be construed so as to maintain the integrity of both. . . ." Gross v. Merchants-Produce Bank, 390 S.W.2d 591, 598 (K.C.Mo.App. 1965).

Where two statutes relating to the same subject conflict, regardless of whether they are enacted during the same session of the General Assembly or different sessions, a court should construe them so that both can be ". . . upheld and given force and effect if reasonably possible to do so. . . ." State v. Chadeayne, 313 S.W.2d 757, 759 (St.L.Mo.App. 1958).

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As previously indicated, we believe it is reasonably possible to harmonize the second sentence of subsection 2 of Section 165.011 with the second sentence of subsection 7 of Section 170.051 and thereby give force and effect to both. The prohibition of subsection 7 of Section 170.051 can be followed without infringing upon the subject covered by subsection 2 of Section 165.011. Only after a school district has fully complied with its responsibilities under Section 170.051 is a transfer of free textbook funds authorized. If a district has furnished textbooks to all eligible children, the purpose for the prohibition in subsection 7 of Section 170.051 has been satisfied and the excess funds may be utilized for other authorized purposes.

CONCLUSION

Therefore, it is the conclusion of this office that any balance remaining in a school district's free textbook fund after textbooks are furnished to all eligible pupils as required in Section 170.051, RSMo 1969, as amended, may be transferred to the teachers' fund as required by Section 165.011, subsection 2, RSMo 1969, without conflicting with the restriction on commingling free textbook funds with the public school fund as set forth in subsection 7 of Section 170.051, Seventy-Sixth General Assembly, Second Regular Session.

The foregoing opinion, which I hereby approve, was prepared by my assistant, D. Brook Bartlett.

Very truly yours,



JOHN C. DANFORTH
Attorney General