

SCHOOLS.
SCHOOL DISTRICTS.
TEACHERS WARRANTS.

As to when suits may lie on a teacher's contract against the school district and manner of paying teachers' warrants.

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Dec 9 1933 R.S. No 1929

10-28

October 25, 1933



Board of Education
Carl Junction, Missouri

Gentlemen:

This Department acknowledges receipt of your letter dated October 14, 1933, as follows:

"Owing to the fact this school district is a large consolidated district and supported mostly by State Aid or Guarantee, the past year has left us practically broke, because of lack of funds in the State Treasury to meet their obligations.

We finished last year with four months of teachers warrants outstanding, since that time we have been enabled to take up one more warrant, but the teachers still hold three warrants, each. We have searched the School Laws carefully and we cannot find anything covering the payment of these warrants, yet the teachers inform us they have contacted an Attorney and he informs them that they can sue the School district for this back salary get judgment in Circuit Court, and Mandamus the Board, and the court will order the board to issue Judgment Bonds in the amount of the judgment, to bear interest at 5%. Is this true? If so, why is it not outlined in the school laws? We are preparing to issue \$5000. Repair bonds, with which to catch up on our buildings, this \$5000. will bring our bonded indebtedness up to the maximum of 5% of our assessed valuation. If this issue passes and we are bonded for the legal limit, can

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the teachers still force us to issue judgment bonds in excess of our legal bond limit?

Will you please give this matter your immediate attention, as we have a meeting with the teachers Thursday night, Oct 9th and wish to have this information at that time."

Section 9312 Revised Statutes Missouri 1929, provides that the treasurer of a school district shall set up on his books three separate accounts; (a) "teachers' fund," (b) "incidental fund," (c) "building fund", and provides that every warrant shall be paid from its appropriate fund and no partial payment shall be made upon any school warrant.

Section 9233 provides as follows:

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected; but the income from state, county and township funds shall be applied only to the payment of teachers' warrants, issued by order of the board to legally qualified teachers for services rendered according to law. No county or township treasurer shall honor any warrant against any school district that is in excess of the income and revenue of such school district for the school year beginning on the first day of July and ending on the thirtieth day of June following; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such funds in accordance with section 9257, and no school warrant shall bear interest."

Under the latter section the treasurer of a school district is not entitled to honor a warrant against a school district except out of the revenue provided or anticipated for the school year in which the service was performed and the warrant drawn.

In Jacquemin, et al. v. Andrews 40 Mo.App. 507, the court at 510 of the opinion said:

"We take it, that, while the board of directors were, by the implication of the statute, prohibited from drawing said warrant on the treasury, unless there was money on hand of that fund, out of which it could be paid, still this prohibition must not be construed so as to preclude the directors from anticipating this fund, if the amount of their warrant could subsequently be paid out of any money coming into the county treasury for that school year, from either or all of the three sources from which that fund, by law, is derived."

While the court indicated that the statute prohibited the drawing of warrants when it was known there were no funds in the treasury for their payment, yet, the court relieved the directors from individual liability on the ground that the directors had a right to anticipate that the revenue provided for would be collected, and therefore would be sufficient to pay the warrants.

The pecuniary liability of a school district, under the holding in Tate v. School District, 23 S. W. (2nd) 1013, is created from month to month as the services of the teachers are performed. A warrant is a mere order upon the treasurer which by mandamus he may be compelled to pay, if there be funds on hand as provided for in the statute, however, this does not mean that the board of directors of a school district could be compelled to draw warrants in favor of a teacher when there is no money in the teachers' fund with which to pay the warrants, and no expectation that such money will be paid into the treasury of the school district from proper sources.

The fact that the board of directors might not be compelled, under such circumstances, to issue a warrant does not mean that a teacher under contract with the school district might not obtain a judgment against the district for the debt created by reason of the execution of the contract between the teacher and the school district, and the performance of service by the teacher. We quote from Rudy v. School District 30 Mo. App. 113, 119:

"In support of this defence the defendant invokes the provision of section twelve, article ten, of the constitution of the state. This, so far as material, reads as follows: 'No county, city, town, township, school district, or other political corporation or subdivision of the state, shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.' But the defence here set up fails to show that the revenue 'provided for' for the school year in question was not sufficient to pay all the teachers; it merely shows that there was a failure to pay into the school district treasury enough for that purpose. If this is a sound view, then the rights of the teacher, under his contract with the district, may be displaced by the negligence or fraud of the tax collector. If the collector negligently fails to collect the school taxes which are levied, or collects them and fails to turn them over, the directors for this reason may, even upon the brief notice of five days, cancel the contract with the teacher. We are of opinion that this is not the law. Undoubtedly the constitutional provision above quoted is self-enforcing. (Citations omitted). But, in order to make it appear that the contract with the teacher was ultra vires on the part of the directors, it must appear that not enough revenue was 'provided' longer to continue the school and not merely that not enough was collected and turned over to the treasurer of the school board."

The teacher may recover on his or her contract for services performed, unless the contract between the teacher and the district be ultra vires, and to make the contract ultra vires under the opinion last quoted from it must appear that enough revenue was not "provided for" to take care of teachers' warrants for the particular school year under consideration. If, in your case, sufficient revenue was "provided for" for the school year in which the warrants mentioned were issued and the service performed, then the teacher, under whose contract the warrants were issued could secure judgment against the district. Mandamus would not lie against the board to pay the judgment unless they had funds on hand applicable for the payment of the warrants which the judgment represents.

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Carl Junction, Missouri

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There is no such thing known to the law of Missouri as "judgment bonds" such as mentioned in your letter. The statement last made will also answer your inquiry with reference to the \$5000.00 repair bonds.

The warrants held by the teachers of your school issued during the last school year, must be paid out of such back taxes or other funds that may properly come into the treasury of the school district from the revenue provided for for such school year.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

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