

SCHOOL FUND: )  
COUNTY OFFICERS: )

Money in county school fund or township fund  
withdrawn from treasury by warrant or order  
by board of directors or treasurer.

December 30, 1933. 1-5-34



Hon. Dockery Wilson  
Prosecuting Attorney  
Harrison County  
Bethany, Missouri

Dear Sir:

This is to acknowledge your letter which reads as follows:

"The Treasurer of Harrison County has asked me to get an opinion from you on the following proposition: The County Court has failed so far to issue warrants for payment of County and Township interest on School Funds. The County Clerk furnished the Treasurer with the 1933 apportionment sheet and asked the Treasurer to make disbursements according to the apportionment sheet without warrants being issued for the same.

Question No. 1- Has the Treasurer the right to make disbursement from the apportionment sheet without any warrants being issued?

Question No. 2- If the County Court should make an order of record directing the Treasurer to make disbursements according to apportionment sheet, would that authorize the Treasurer to issue checks for disbursement?

Please let me have an answer as soon as possible. The school districts are in need of this money."

Article 2, Chapter 57, R. S. No. 1929, is styled "Laws Applicable to all Classes of Schools", and Section 9243 of said article and chapter provides as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent. per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

Section 9247 provides as follows:

"The proceeds of the sixteenth section, or other lands selected in lieu thereof, the interest of such proceeds, the rents and profits of such lands, and all the public school moneys which shall be apportioned to any unorganized township, arising from dividends, proceeds and profits of the public school fund, shall constitute a township school fund."

You state: "The County Court has failed so far to issue warrants for payment of County and Township Interest on School Funds." We assume you mean by this statement, funds obtained by virtue of Sections 9243 and 9247, supra, and our opinion is written on this assumption.

Note these statutes relating to county school funds (Section 9243) and township funds (Section 9247).

Section 9245 provides as follows:

"Whenever any county in this state may have, separate and apart from the township funds, any public school fund arising from any source whatever, the same shall be under the jurisdiction of the county court of said county, who shall be governed in its care and investment by the same rules and regulations as govern its actions in the township funds--the proceeds of said funds to be collected annually and distributed as provided in section 9257."

Section 9248 provides as follows:

"The county courts, respectively, shall have the care and management of the school funds of the several townships within their respective jurisdictions, and shall cause accounts thereof to be stated and kept so as to exhibit the funds of each township separately, and the disposition thereof."

The above statutes show the sources of these funds and management of same. Your attention is directed to the underscored portion of Section 9245, supra.

Section 9246 in part provides:

"The county treasurer shall collect, or cause to be collected, all school moneys mentioned in section 9243, and all other moneys for school purposes in his county, etc."

It is thus seen by Section 9246 that the county treasurer collects all school moneys and Section 9245 provides, "any public school fund arising from any source whatsoever-----the proceeds of said funds to be collected annually and distributed as provided in section 9257."

Section 9257 provides for the "Apportionment of public school fund" and in part provides as follows:

"The state superintendent of public schools shall, annually, before August 15th, apportion the public school fund applied for the benefit of the public schools among the different counties. This apportionment shall be made as follows: etc."

And further,

"and in making such distribution, each county clerk shall apportion all moneys collected on tax duplicate of any district, for the use of schools to such district, all moneys received from the state treasurer, and all moneys on account of interest of the funds accruing from the sale of section sixteen or other lands in lieu thereof to the district schools in the congressional townships, and parts of congressional townships to which said land belonged, and all other moneys, for the use of schools in the county, and not otherwise apportioned by law, to the proper district: etc."

Section 9261 pertains to the "Duties of county clerk--assessment of estimates."

Section 9263 provides as follows:

"The clerk of each and every county court shall, on or before the thirty-first day of July, annually, make out and transmit to the state superintendent of public schools, at Jefferson City, an abstract of all the returns of school districts, cities or towns in his county made to him according to the form that may be prescribed by the state superintendent; also, the amount of income of the school funds of said county, and amount realized from taxes collected therein."

Section 9264 provides in part as follows:

"It shall be the duty of the county clerk to take a receipt from the county collector for the school taxes by him placed on the general tax books; and the collector shall proceed to collect the same in like manner as the state and county taxes are or may be collected, etc."

Section 9266 provides in part 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, etc."

Above we have shown that the statutes provide that county school fund and township fund are under the management of the county court. The interest arising from these funds is apportioned to the school districts as provided for in Section 9257. All school moneys arising from any source (Section 9266) are in the custody of the county treasurer and such custody divested from him "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." We have thus seen that it is not necessary for the county court to make any order or draw any warrant for the school districts to receive this money. The only thing necessary is a warrant or order from the board of directors.

In answer to your question No. 1, it is our opinion that the treasurer has no right to make disbursement from the apportionment sheet without any warrants being issued. The warrants or order, however issued (Section 9266), come from the board of directors, treasurer or et cetera of the school or school district. Thus, our answer to your question No. 2 will be in the negative.

A word might at this time be appropriate as to the nature and object of this fund. A reading of Corpus Juris, Vol. 56,

page 179 et seq., under the title of "School Lands and School Funds" gives a fair epitome of this subject. Page 562 of the same volume of Corpus Juris, relating to the power and duty to issue warrants in general, has this to say:

"The power and duty of ordering, drawing, signing, or paying school warrants or orders is usually vested by statute in certain specified boards or officers, under which statutes it is held to be the imperative duty of the proper officer to draw or sign warrants when properly requested or presented; and if he improperly refuses to do so a writ of mandamus will lie at the instance of one showing himself entitled to such warrant or order, to compel its issuance. Warrants drawn by de facto officers charged with that duty are valid. On the other hand, warrants drawn by the officers of a school district organized contrary to law so that it has no de facto existence are invalid. Where the power to draw such warrants or orders is vested in a particular board, it is a personal trust which cannot be delegated by such board to one of their number, but must be executed in person by each and all; and so, following the general rule that boards must act as a body and not as individuals in the making of contracts, a warrant issued by an officer pursuant to an agreement entered into by the members of the board as individuals is invalid."

Trusting the above answers your inquiry, we are

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED: \_\_\_\_\_  
ROY McKITTRICK  
Attorney-General.