

SCHOOLS: Restrictions on use by consolidated school districts of funds received from the State, (a) as income from the State school fund, and, (b) as State aid derived from the ordinary revenue of the State.



November 14, 1934

Hon. Melvin Englehart,
Prosecuting Attorney Madison County,
Fredericktown, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of October 29, 1934, such request being in the following terms:

"Please give me your opinion of the following inquiry according to the following state of facts; Consolidated Dist. No., 1, of Madison County, Missouri was organized under section 9338 R. S of Mo., 1929, and is now operating under said section in regard to the state aid received by said school. They are voting a tax rate of \$1.00 on each hundred dollars valuation and they should receive fifty dollars per pupil in average daily attendance during the preceding year for teachers and incidental expenses. Of course the state is unable to pay this amount at this time but a certain per cent is paid.

I have been asked this question; "Is the amount of monies that this school district receives from the state to be divided between the teachers and incidental expenses of the school according to section 9338 or is it to be governed by section 9233, which provides that 'all moneys arising from taxation shall be paid out only for the purposes for which it was levied and collected; but the income from state, county and township school funds shall be applied only to the payment of teacher's warrants' "?

It seems that the State Dept., of Education has informed this district that section 9233 prevails, but I do not believe that the State Dept., of Education knows that said district is operating under section 9238. If you have prepared an opinion for the State Dept., of Education on this question, please mail me a copy immediately. I remain,"

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It would seem to us that the person asking the question presented in your letter was not entirely clear as to the distinction between the income of school districts from the permanent public school fund and the income of such school districts from the ordinary revenue of the State. We shall endeavor to point out the constitutional and statutory provisions which indicate that these two sources of income are separate and distinct.

I

INCOME FROM STATE FUNDS DISTINGUISHED FROM
INCOME DERIVED AS ORDINARY REVENUE.

R. S. Missouri, 1929, Section 9233, provides in part 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,"

and is included in Chapter 57 of such statutes within Article 2, which Article contains laws applicable to all classes of schools. If in such statute the phrase "income from state * * * funds" describes all the money which the several school districts receive from the State for the support of their schools, then this statute would require on its face that all the money received by a school district from the State should be used to pay teachers' warrants. This, however, is not the meaning of such section.

Section 6 of Article XI of the Constitution of Missouri provides as follows:

"Public school fund, from whence derived, not to be diverted.-- The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will consent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift

or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

From this constitutional provision it is apparent that the school districts have two sources of income from the State, first, the income from the permanent school fund, and second, that percentage of the ordinary revenue of the State as may be by law set apart for this purpose, and another constitutional provision fixing a minimum amount is Section 7 of Article XI which provides as follows:

"Deficiency, how provided for--minimum from State revenue.-- In case the public school fund now provided and set apart by law, for the support of free public schools, shall be insufficient to sustain a free school at least four months in every year in each school district in this State, the General Assembly may provide for such deficiency in accordance with section eleven of the article on revenue and taxation; but in no case shall there be set apart less than twenty-five per cent of the State revenue, exclusive of the interest and sinking fund, to be applied annually to the support of the public schools."

From these provisions it is demonstrated that the provisions of Section 9233, above quoted, mean that it is the income from the permanent school fund which can be used only to pay teachers' warrants and that Section 9233 does not attempt to restrict the money received by school districts derived from ordinary revenue to be expended only for the payment of teachers' warrants. For further confirmation of this distinction see R. S. Missouri, 1929, Chapter 57, Article 24, which contains provisions dealing with the handling of the permanent State school fund, and also see Laws of 1933, page 24, which shows the disposition of the income from the permanent school fund, with which compare the Act on page 26 which shows the disposition of that part of the ordinary revenue to be distributed for the support of schools.

II

RESTRICTIONS ON USE OF STATE MONEY DERIVED FROM ORDINARY INCOME.

Although Section 9233, above quoted, requires the income from the permanent school fund to be used to pay teachers' warrants, there is no statutory provision similarly restricting the use of income derived by school districts from the ordinary revenue of the State. Furthermore, R. S. Missouri, 1929, Section 9358, provides in part as follows:

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"Whenever any consolidated school district votes one hundred cents on the one hundred dollars assessed valuation for teachers' and incidental purposes and the proceeds of said tax together with the estimated amount from county, township, and state funds and cash on hand amount to less than fifty dollars per pupil in average daily attendance during the preceding year for teachers and incidental expenses, the state superintendent of schools shall each year before apportioning the public school fund set aside and apportion to each such district a sum sufficient to enable said district to expend fifty dollars per year per child in average daily attendance."

The substance of this provision seems to be that if the amount derived from local taxation for teachers' and incidental purposes does not come up to fifty dollars per pupil, the difference shall be made up from the public school fund, and the phrasing and purpose of this statute would seem to indicate that where such a difference is made up, the difference as received from the State should be used for the same purposes for which the same amount would have been used had local taxation been sufficient to cover it, and such inference in our opinion would prevail in the absence of any contrary constitutional or statutory provision.

In conclusion, it is our opinion that although money received by a consolidated school district from the State as the income from the permanent State school fund can be used only for the payment of teachers' warrants under R. S. Missouri, 1929, Section 9333, that such section 9333 in imposing such a restriction is applicable only to income from the permanent State school fund and not to money received by a consolidated school district from the State which is not derived from such income but is derived from ordinary revenue of the State, and that where money is received from the latter source under Section 9333, such money can be used for incidental purposes as well as for the payment of teachers.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney-General

APPROVED:

ROY McHITTRICK
Attorney-General