

SCHOOL BONDS: / Proceeds from Bonds voted for purpose of repairing buildings cannot be diverted and used for the teacher and incidental funds.

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January 19, 1934.



Mr. Ray E. Miller, Secretary,
Board of Education,
Carl Junction High School,
Carl Junction, Missouri.

Dear Sir:

This department acknowledges receipt of your letter as follows:

"Mrs. Evans, President of the Board of Education of Carl Junction Consolidated School District, has directed me to write you for an opinion on the matter of the liability attached to a Board of Education who issue building and repair bonds, use only a part of the funds derived from these bonds to make repairs and use the balance to relieve a shortage in the teachers and incidental funds.

The state having failed to pay this district, which is state supported, we are broke. Having a large community high-school, 240 students enrolled in the high school alone, also having a live and energetic Community Club, and four wide awake churches, they have petitioned the Board of Education to call an election to issue repair bonds, make some minor repairs and then as the law provides that any funds left over after the object of the issue is completed, may be apportioned wherever needed, to use any balance to run our schools.

The call for this bond issue has been posted, and the Board desires to know, will they as members be held responsible, should some one object to the manner in which this bond money is used? If they are liable, then the money derived, should the issue carry, will be used to make some much needed repairs, but if it is possible under such dire circumstances, to make some much needed repairs, then whatever amounts are left to use them to assist on this

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Part of proceeds from school bonds in common school district voted for the purpose of repairs cannot be diverted and used for the Teacher's or Incidental Funds.

It has been held by the courts of this state that the proceeds from bonds voted for one purpose cannot be used for another purpose. As was said in the case of Horsefall v. School District, 143 Mo. App., l.c. 544-545:

"Plaintiffs, in their petition, allege that the election for the purpose of authorizing the board to issue the bonds of the district was void and assigns therefor ten reasons. Several of these relate to the use which the board is proposing to make of the money realized from the sale of the bonds and to the action of the board and the conduct of the election in relation to the question of a site on which to build a new high school building. As to the intended use of the money, it is sufficient to say that the order of the board providing for the election and the notice of election provide only for the issuing of bonds in the sum of twenty-five thousand dollars for the purpose of erecting a high school building, and the board of directors have no authority to use any of the money they realize from the sale of these bonds for any other purpose. The notice of election notified the voters that this money was to be used for the purpose of erecting a high school building, and they, having voted upon that proposition, the hands of the board are tied, and they cannot use any part of it for the purpose of purchasing a site, nor for paying existing indebtedness, nor for any purpose except that for which it was voted, which is the erection of a high school building. The evidence, however, that the board was attempting to divert any part of this money from the purpose for which it was voted is not very satisfactory, and we assume that on this issue the finding of the court was for the defendant for the reason that the plaintiff had failed to prove his allegations."

It has also been held that funds collected by taxation for school purposes cannot be diverted from one fund to another. In the case of Cleveland Village School District v. Zion, 195 Mo. App. 299, the Court said (l.c. 304):

"Again money collected by taxation for school purposes cannot be diverted from one fund to another. Certainly money in the teacher's fund cannot be transferred to and used in the incidental fund. There is nothing in either the petition or judgment showing to what fund the money belongs or to what fund it should go when paid to plaintiff. If the division is made between the two districts as provided by sections 10839 and 10840 the matters as to the various funds will be fully known and the money can be properly distributed."

CONCLUSION

From the decisions quoted above (and there are numerous other authorities to like effect), we are of the opinion that your school board would be liable if the money derived from part of the bonds in question were used for repairs and the balance diverted to the Teacher's and Incidental Funds.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General.

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