

SCHOOLS: --

{ Liability of Board of Directors.
{ Right of Teachers to Sue on Contract.
{ Payment of Back Warrants.

March 19, 1934.

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



Dear Sir:

This is to acknowledge your letter as follows:

"These depressing times have caused no end of trouble to boards of education and ours is no exception. Our teachers still hold three months of last years warrants and January and February warrants for this year. The Department of Education have promised to put us on the Federal relief rolls about March 1st, yet some of the teachers say they will hold the board responsible for every cent the contracts call for. They even say that should the federal aid be less than their contract salary, they will accept the aid and expect the Board to make up the difference, with these questions in mind, the Board have ask for your interpretation on the following.

- "1st. If a Board sets a levy, signs contracts with teachers, makes incidental bills, all with the expectation of having sufficient funds with which to pay, but finds through such circumstances as have occurred the last two years that they cannot pay, then is the district liable for the full amount of the contracts or are the contracts automatically paid when funds run out?
- "2nd. If the teachers accept government aid March 1st and the salary is less than

their contract salaries, can they hold the Board responsible for the difference?

"3rd. Can a teacher bring suit against a Board for salary as per contract, when the funds have run out through no fault of the Board? You understand that when one year lapses, then those salaries can only be paid with back taxes or collection for that year, How is a board to tell how to divide the money received? What if the taxes never come in and it looks as though they would not, then how can a Board raise money to pay such back warrants? We don't see how they can be paid as you are not allowed to vote bonds for such payments are you?

"4th. If the teachers do sue the district, is it only possible to get judgment against the district? They could not get Judgment against the Board members could they? Is there any law that could force a Board of Education, against which judgment had been rendered, to devise means to pay the judgment? If not then what good would the judgment be to the teachers?

"5th. Please tell this board just what to expect, or what can legally be done to them, when it looks as though we would end the present school term owing the teachers about three months salaries, and no funds in sight with which to ever pay them, also. on top of this they still hold three warrants from last school term? Can they obtain a judgment for the amount of these warrants? Should the Board issue another warrant now that it looks as though they might not be paid?

"Hope my questions are not to confusing, and that we can have an interpretation soon."

In looking over our files, we find that on October 25, 1933, this department rendered an opinion to the Board

of Education, Carl Junction, Missouri, which answers practically all of the questions contained in your present request. Assuming that you do not have a copy of this opinion, we are herewith enclosing a copy of same.

We will answer the questions asked in your letter as briefly as possible and the enclosed opinion will sustain the authority for such.

At the outset, we desire to call to your attention certain fundamentals which are to be borne in mind when an answer appears to your specific question, namely:

1. That Board of Directors do not have any authority to order a warrant or enter into a contract exceeding the revenue provided for the current year. If such warrants or contracts are issued, they do not constitute a legal claim against the district. Section 9311, R. S. Mo. 1929.
2. There is no personal liability on the part of the directors for a school warrant drawn when there is not sufficient money in the treasury to pay same if such warrants issued are not in excess of the taxes levied and other income as the directors have a right to anticipate that the revenue provided for would be collected. Jacquemin, et al. v. Andrews, 40 Mo. App. 507.
3. However Board of Directors are liable if the acts of such were not done in good faith; and with willful intention; that is, such that would be considered mal-feasance in office. Consolidated School District No. 6 v. Shawhan et al. 273 S. W. 182.
4. Board of Directors have no power to violate Section 11, Article X. and

Section 12, Article X. of the Constitution of Missouri, same being a limitation upon the annual debt creating power of a school district. In other words, the contract cannot create a debt of the school district within the intent and meaning of the Constitution aforesaid.

Referring now to your specific question and bearing in mind premises above -

1.

(a) It is our opinion that if a contract is entered into in good faith and within the constitutional provisions and revenue anticipated, then the district is liable for the full amount of the contract.

(b) The contracts are not automatically paid when funds run out.

2.

If the teachers accept government aid as part of their compensation, under their contracts with the Board and it is not sufficient to pay contract salary in full, then such may hold the ~~Board~~ ^{DISTRICT} responsible for the difference if any.

3.

(a) The teacher may bring suit against a district for salary as per contract even though the funds have run out through no fault of the Board. Tate v. School Dist. No. 11 of Gentry County, 23 S. W. (2d) 1013. (Mo. Sup.Ct.)

(b) You are correct in your assumption that salaries shall only be paid with taxes collected for the year in which they are incurred. It is the duty of the Board, at the beginning of the year, to make proper provisions for the division of the revenue; and, if taxes are not collected sufficiently to pay these items and are subsequently received, then they should be applied to the various funds pro rata.

- (c) If the taxes are never collected then there is no way in which the Board may raise money with which to pay these back warrants.
- (d) There is no way in which bonds may be voted for the payment of such.
- (e) Quoting from the fifth page of the attached opinion: "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 such school year."

4.

- (a) If the teachers have a legitimate claim against the district, then it is possible to get judgment against the district.
- (b) The teachers may not obtain judgment against the Board members if such Board members acted in good faith and within statutory law.
- (c) There is no provision in the law which could force the Board of Education, (after a judgment had been rendered against district), to devise means to pay same other than if money was in the treasury; then a mandamus action could be brought to compel payment of same out of the funds.
- (d) We do not comment upon the fact as to what good a judgment would serve the teachers if it were obtained and uncollectable.

5.

Your question No. 5 has been answered in the preceding question other than the part wherein you ask, "Should the

Board issue another warrant now that it looks as though they might not be paid?" Our answer to that question is -Yes. The Board has the right to assume that the taxes will be paid, as much so, as they have the right to assume that such will not be paid. In order to be consistent, you would have to issue the warrants.

We earnestly ask that you re-read the enclosed opinion and bear in mind the statutory duties of the Board of Directors.

In Consolidated School District No. 6 v. Shawhan, (supra), the Court said:

"Under our state law the government of a school district, as well as the handling of the finances thereof, is vested in a board of directors, duly elected by vote. Their powers and duties are prescribed by statute. A trust is reposed in them, the execution of which is frequently attended with difficulty and embarrassment. By accepting such trust each director obligates himself to perform the duties as the law directs, and if there is a misapplication of the funds, or any part thereof, the question for determination is as to whether or not the directors are personally liable and may legally be required to respond in damages therefor."

"Also in Boulicault v. Glass Co., 283 Mo. 237, 249, 223 S. W. 423, 426, it is said:

"In a sense directors of a corporation are trustees and agents of the corporation and stockholders. In a general way they are governed by the same rules as are applied to trustees and agents' * * * and for a

failure to discharge their obligations as such they become liable for corporate losses resulting therefrom."

Yours very truly,

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Assistant Attorney-General.

APPROVED:

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JLH/afj