

SCHOOLS: \$400.00 appropriation made by State to counties to be placed into county revenue fund as special fund and same applied on payment of county superintendent's salary.

10-8  
October 2, 1935.



Mr. Roy S. Dunsmore  
County Superintendent of Schools  
Oregon County  
Alton, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Section 61 of the 1935 laws shows the \$400.00 to be applied on the salary of the county superintendent is to be deposited as a special fund.

"As a manner of handling this fund the following method has been suggested: For the county superintendent to hold the three last salary warrants (which will amount to \$400.00) and not protest them. When this fund comes in from the state the treasurer will take up the warrants by drawing on this fund.

"Please advise us whether or not this would be a satisfactory way to handle the fund, and if not will you please state the way it should be handled."

Laws of Missouri, 1933, Section 9465, page 385, provides as follows:

"For the purpose of ascertaining the population of any county in this state in order to determine the salaries

of County Superintendents of public schools, the last previous decennial census of the United States shall be conclusive."

Oregon County, according to the last decennial census of the United States, has a population of 12,220 inhabitants.

Laws of Missouri, 1933, Section 9463, page 384, in part provides as follows:

"In counties having \* \* \* population the County Superintendent of Schools shall receive \* \* \*; in counties having a population of more than twelve thousand and less than fifteen thousand he shall receive One Thousand Six Hundred Dollars; \* \* \* \* \* of which the State of Missouri shall appropriate annually out of the general revenue fund of the state of Missouri four hundred dollars to each and every county. The county superintendent shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasurer."

A reading of the above section shows that the Legislature contemplated four things: First, that the salary of the county superintendent of schools should be ascertained by the population method; second, that the salary is specific as to amount; third, that the State of Missouri intends to appropriate four hundred dollars annually to each and every county and, presumably, to assist the county in paying the salary of the county superintendent of schools; fourth, that the county superintendent of schools receives his salary from the county revenue fund monthly on a warrant drawn on the county treasurer.

It is thus seen that if the State did not appropriate the four hundred dollars to each and every county that the county superintendent of schools would receive his salary regardless of what the State does. And it is further seen that the county superintendent of schools obtains his money from the county revenue fund on a warrant drawn upon the county treasurer.

On March 2, 1933, this Department rendered an opinion to Hon. J. R. Gideon, Prosecuting Attorney, Taney County, Missouri, wherein we held that the moneys the State appropriated went into the general revenue of the county and that the county court was not authorized in setting it aside as a special fund for the payment of the county superintendent's salary. This ruling was made in view of the 1929 law and the appropriation acts of 1929 and 1931. However, since said opinion was rendered, the 1933 Legislature amended Section 9463 and also passed an appropriation act similar to the 1935 appropriation act, which, beyond peradventure of a doubt, specifically instructs that the moneys the State appropriates must be applied on the salary paid the county superintendent of schools.

We invite your attention to Section 42, page 87, Laws of Missouri, 1933, and Section 61, Laws of Missouri, 1935, page 114. We quote Section 61 as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the general revenue fund for the fiscal years 1935 and 1936 the sum of Ninety-One Thousand, Two Hundred Dollars (\$91,200.00) for the purpose of carrying into effect Section 9463 Revised Statutes of Missouri, 1929, which provides that the State shall pay annually to each county the sum of \$400.00, same to be credited to a special fund and applied on the salary paid the County Superintendent of Schools."

October 2, 1935.

In view of the above appropriation act it is our opinion (1) that our opinion dated March 2, 1933, as far as same conflicted with this one, is hereby overruled; (2) that it is our opinion that the four hundred dollars received by the county by virtue of said Section 61 shall be placed in the county treasury and there earmarked as a special fund, and same applied on the salary of the county superintendent of schools; (3) that the plan suggested in your letter of handling said fund is feasible and would be a proper method to follow. The plan, as suggested by you, meets all the requirements of the statute, namely, that the Legislature gives four hundred dollars to each and every county and that said four hundred dollars is placed in the county revenue fund, and that the county superintendent of schools receives his salary from the county revenue as provided by Section 9463, supra; so that all provisions of the statute are fully complied with.

The Legislature clearly intended by its appropriation act that the four hundred dollars was not to augment the county revenue fund but was to be used solely to be applied on the payment of the county superintendent's salary. We presume the Legislature, when it made this appropriation in 1935, had also in mind the county budget act passed by the 1933 Legislature, and also our opinion of March 2, 1933, and thus removes all doubt as to its intention as to how said four hundred dollars would be used and did so by creating a special fund, same to be applied on the salary paid the county superintendent of schools.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General

JLH:EG