

SCHOOL DISTRICTS:SCHOOL FUNDS:SCHOOL FUND ACCOUNTED:SCHOOL WARRANTS:TAXATION: Treasurer required to set up different funds and only those named in statute.Warrants must provide specific fund.Warrant payable only out of fund drawn on.Treasurer liable on bond for violation.School funds payable only on school warrant.Delinquent taxes to be credited to the particular fund for the particular year for which levied.School board required to issue warrants when delinquent taxes collected. Issued warrants to be paid out of delinquent taxes when collected. Delinquent taxes to be used only for purposes for which levied. Section 9555.Delinquent taxes not all to be credited to teachers' fund. School board can not authorize the setting up of any fund except those named in statutes.

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January 11, 1935

Honorable Charles A. Lee
Superintendent of Schools
Jefferson City
Missouri



Dear Sir:

Receipt of your letter dated December 21, 1934, respecting school fund accounting, is acknowledged.

It is somewhat difficult to determine wherein a large part of the matters about which you inquire come, in any way, within the scope of the discharge of your official duties. Waiving that, we will proceed to a consideration of the eleven questions asked by you in their order after making some preliminary observations and references to statutes and decisions.

Section 9214 Revised Statutes Missouri 1929, in part provides:

"The board of directors of each district shall* * * forward to the county clerk an estimate of the amount of funds necessary to sustain the schools of their district for the term required by law* * * stating clearly the amount deemed necessary for each fund and the rate required to raise said amount."

In Pope v. Lockhart 299 Mo. 141, 146, the Supreme Court of this State said:

"The statute (Now sec. 9214 R.S. 1929) makes it the duty of the school board to make the estimate of the funds

necessary to sustain the school in its district and state the amount and the rate required to raise it."

Section 12 of Article X of the Constitution of Missouri provides that,

"No county, city, town, township, school district, or other political corporation or subdivision of the state shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition * * * *."

Section 9233 Revised Statutes Missouri 1929 provides:

"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, issued by order of the board to legally qualified teachers for services rendered according to law. No county or township treasurer shall honor any warrant against any school district that is in excess of the income and revenue of such school district for the school year beginning on the first day of July and ending on the thirtieth day of June following; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such funds in accordance with section 9257, and no school warrant shall bear interest. "

Section 9311 Revised Statutes Missouri 1929, in part reads:

"Upon the order of the board of directors, it shall be the duty of the district clerk to draw warrants on the county treasurer in favor of any party to whom the district has become legally indebted* * * * the said warrant to be paid out of any moneys in the appropriate funds in the hands of the said treasurer and belonging to the district. The species of indebtedness must be clearly stated and should be drawn on its appropriate fund; all moneys for teachers' wages on the teachers' fund; all moneys used in the purchase of a site, erection of building thereon, and furnishing the same, on building fund; and all other expenses to be paid out of the incidental fund* * *."

Section 9312 sets out the form of warrants to be used by the board of directors of the school district in drawing on each the teachers' fund, the incidental fund and the building fund, the respective warrants being limited in their payment to funds on hand for the payment of each particular fund and designated in the warrant. Further, the section provides:

"The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from the taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the 'teachers' fund;' the money derived from taxation for incidental expenses shall be credited to the 'incidental fund;' all money derived from taxation for building purposes, from the sale of school site, schoolhouse or school furniture, from insurance, from sale of bonds, from sinking fund and

interest, shall be placed to the credit of the 'building fund;' and all moneys not herein specified that now belong to any school district, or that may hereafter be received by such school district, shall be placed to the credit of the 'teachers' fund' of such school district. No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate fund; and each and every warrant shall be paid from its appropriate fund, and no partial payment shall be made upon any school warrant, nor shall any interest be paid upon any such warrant: Provided, that the board of directors shall have the power to transfer from the incidental to the building fund such sum as may be necessary for the ordinary repairs of school property: Provided further, that in the event of a balance remaining in the building fund after the purpose for which said fund was levied is accomplished, the said board shall have the power to transfer such unexpended balance to the incidental fund: Provided further, that by a majority vote of the school board tuition fees may be used to liquidate indebtedness accrued in the building fund."

Section 9555 Revised Statutes Missouri 1929, having reference to school districts in cities of seventy-five thousand to five hundred thousand, provides:

"The treasurer of the district shall open an account for each fund specified in this section, and all moneys derived from the state, county and township funds, all tuition fees and all back taxes, and such portion of the moneys derived from the levy of the tax for school purposes as shall be set apart to that fund by

the board, shall be placed to the credit of the 'teachers fund;' the moneys derived from taxation under the provisions of section 9533, from the sale of real estate, schoolhouses, library buildings or other buildings of any kind and school furniture, from insurance, and from sale of bonds other than funding and refunding bonds, shall be placed to the credit of the 'building fund;' all moneys derived from the levy of the tax for sinking fund and from interest on the sinking fund shall be placed to the credit of the 'sinking fund;' all moneys derived from the levy of the tax for annual interest on outstanding bonds shall be placed to the credit of the 'interest fund;' and all other moneys and funds of the school district, from whatever sources derived, shall be placed to the credit of the 'incidental fund.' The treasurer shall not honor any warrant unless it be drawn upon the appropriate fund, and each and every warrant shall be paid from its appropriate fund. No interest shall be paid on any warrant. The board of directors shall have power, in its discretion, from time to time, to transfer from the 'incidental fund' to any other of said funds such amounts as it may deem proper."

In *Jacquemin and Shenker v. Andrews* 40 Mo. App. 507, the court had under consideration an action by a teacher employed by the board of directors of a school district, against such board of directors, on account of a warrant issued by the district to the teacher. At page 510 of the opinion the court made the following general observation:

"We take it, that, while the board of directors were, by the implication of the statute, prohibited from drawing said warrant on the treasury, unless there was money on hand of that fund, out of which it could be paid, still this prohibition must not be construed so as to preclude the directors from

anticipating this fund, if the amount of their warrant could subsequently be paid out of any money coming into the county treasury for that school year, from either or all of the three sources from which that fund, by law, is derived."

As to the effect of the constitutional provision above quoted from, in Kane and Company v. School District 48 Mo. App. 408, 413, and having under consideration an action on account of a school district warrant, the court at page 413 of the opinion said:

"More that this, the so-called treasurer's warrant purports to bind the school district two years in the future, in that the treasurer is directed to pay the same about two years after its date. The evidence conclusively shows that there was no money on hand then to pay the same nor any provided for in that fiscal year. Hence, this order was an effort to pledge the future credit of the defendant, in clear violation of section 12, article 10, constitution of Missouri."

The case of School District v. Zion 195 Mo. App. 299, on the question of diversion of one school fund to another the court at page 304 of the opinion said:

"Again, money collected by taxation for school purposes can not be diverted from one fund to another. Certainly money in the teachers' fund can not be transferred to and used in the incidental fund."

In Consolidated School District No. 6 v. Shawhan 273 S. W. 182, an action by the school district against the board of directors thereof to recover the sum of \$802.36 belonging to a definite fund for payment of teachers' salaries, and which, it is alleged, was diverted from said fund and expended for other purposes for which the district was obligated. At page 183 of the opinion

it was stated and held:

"It is not disputed that defendants, as directors of plaintiff district, did divert the funds for the payment of teachers' salaries to the payment of other obligations. The question then is as to whether defendants are personally liable to plaintiff therefor.

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."

After quoting Section 11159 Revised Statutes Missouri 1919, which is now Section 9233, above quoted, and referring to Section 11223 Revised Statutes Missouri 1919, which is now Section 9312 in part, above set out, the court further said, on page 184 of the opinion:

"Section 11223 sets forth the form of warrant to be issued by school boards, a separate form for teachers' fund, for incidental fund, and for building fund, and provides that all money derived from the state, county, and township funds, and all money derived from taxation for teachers' salaries, and all tuition fees, shall be placed to the credit of the teachers' fund; that money for incidental purposes shall be kept in the incidental

fund and all money for building purposes in the building fund. Further, this section prohibits the honoring of any warrant by any county treasurer unless such warrant be in proper form and drawn upon the proper fund; and provision is made that, in case of emergency, transfers back and forth of the incidental and building fund may be made by the board." The court held the defendants liable.

With the foregoing statutory provisions and decisions of the court before us, we proceed to a consideration of the questions propounded by you. We set your questions out in full.

- (1) Is it mandatory for a treasurer of a school board in this state to set up and open an account for each fund as named in the foregoing section?

Section 9312 provides that,

"The treasurer shall open an account for each fund specified in this section* * * *."

Those funds are 'teachers' fund'; 'incidental fund'; 'building fund.'

Section 9233 provides that all moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected.

Section 9555, having to do with school districts in cities of seventy-five thousand to five hundred thousand, provides for the setting up by the treasurer of the district of five funds, viz: teachers' fund, building fund, sinking fund, interest fund and incidental fund. Laws of Missouri 1931, page 345, Section 15a, provides for the county treasurer placing certain moneys to the credit of the 'Free Text

Book Fund' of each school district. The treasurer of the school district or school board is a creature of the statute and it is mandatory for him to comply with his duties in respect to setting up the respective funds on his books.

- (2) Is it legal for a school board to set up a fund for a purpose not named in any statute?

Since the statute has prescribed the funds which may be set up on the books of the district or its treasurer, it necessarily follows that the school board or treasurer thereof has no legal authority to set up a fund for a purpose not named in any statute.

- (3) Can the treasurer of a school board legally honor the payment of any school warrant when not drawn chargeable to a specific and statutory school fund?

Under statutes and decisions above quoted a warrant issued by a school district should be drawn upon the fund out of which it is payable, and the treasurer of a school board has no authority to honor a warrant not drawn chargeable to a specific and statutory school fund.

- (4) Can the treasurer of a school board pay any warrant if there is insufficient money on hand in the particular fund on which the warrant is drawn, while at the same time the "money on hand" in all funds be sufficient to pay such warrants? If not, is he liable on his bond for so doing?

The treasurer of a school board is only authorized to pay a warrant of the board out of the money in the particular fund on which the warrant is drawn. The fact

that there may be money on hand in other funds is immaterial. Undoubtedly the treasurer of a school board would be liable on his bond for the payment of a warrant drawn on one particular fund out of moneys in another fund not designated in the warrant.

- (5) Can the school funds be paid out by any other method than by issuing a school warrant, as by payment by bank check, cash, etc? If not, is the treasurer paying other than by warrant, liable on his official bond for such conduct?

Section 9312 prescribes the form of the warrants to be used in drawing on teachers' fund, incidental fund and building fund, and the section provides that,

"No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate fund* * * *."

We take it that the proper form for a school district warrant to take is the form prescribed by the statute. Therefore, the payment out of school funds by means of bank checks, or cash, and without a warrant therefor, is not authorized. As to whether the treasurer would be liable on his official bond for paying out money on instruments other than a warrant or by cash, might, in some instances involve a question of fact and equity, such as the indebtedness of the district having been discharged by the payment of such instrument and therefore the district having received the benefit therefrom, so that we can not answer your question in general terms.

See, Sparks v. Jasper Co. 213 Mo. 218; Missouri Township et al. v. Farmers Bank of Forest Green 42 S.W. (2nd) 353.

- (6) Is it mandatory that all delinquent tax collections for school districts (except cities of 75,000 population or over) be credited to the particular fund for the particular year for which

they were originally levied, as indicated in the estimate before the county clerk for that year?

Delinquent tax collections for school districts should be credited to the particular fund for the particular year for which they were originally levied.

- (7) Is the school board of any district obligated to issue warrants for unpaid bills incurred during the particular school year when delinquent taxes collected for that particular year have been received by the treasurer, (limited, of course, to the extent of the delinquent taxes collected and credited to the respective funds)?

The school board of a district is obligated to issue warrants, for unpaid bills incurred during the particular school year, when delinquent taxes collected for that particular year have been received by the treasurer of the district. We are leaving out of mind any question of priority of rights between warrant holders.

- (8) In cases where school boards have issued warrants within their estimated receipts for particular funds, but money is not immediately available, is the district treasurer obligated to honor these warrants when money becomes available from delinquent taxes, limited, of course, to the extent of the delinquent taxes collected and credited to the respective funds?

When a school board has issued warrants within its estimated receipts for particular funds and thereafter money becomes available from delinquent taxes in such particular funds, then such warrants are entitled to be honored

drawn on such respective particular funds. Again, we are not considering any question of priority as between warrants that may have been drawn on any fund.

- (9) Has the school board in any district the legal right to use delinquent tax collections for current expenses when the district still has outstanding obligations for the previous year or years in which the taxes collected originally were levied?

Your question number (9) is a substantial repetition of your question number (6). Delinquent tax collections should be credited to the particular funds for which they were originally levied and can not lawfully be used for the payment of the current expenses of the district.

- (10) Under the provisions of Section 9555 (which applies to cities of 75,000 population or over) is it mandatory that all delinquent taxes shall be credited to the teachers' funds in such districts, disregarding the fund for which the taxes were originally levied as indicated in the boards original estimate to the county clerk?

Section 9555 has heretofore been set out in full. Section 9233 provides that,

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected* * * * *"

Section 9214, applicable to all classes of schools, provides that,

"The board of directors of each district * * * * "

shall "forward to the county clerk an estimate of the amount of funds necessary to sustain the school of their district for the time required by law* * * stating clearly the amount deemed necessary for each fund and the rate required to raise said amount."

We have heretofore noted the different funds that are to be set up on the books of a district. Section 9285, relating to schools of all classes, provides:

"The collector shall, at the time of returning the land delinquent list for state and county taxes, return therewith all land school taxes herein provided for which shall remain unpaid, and when so returned, the same shall be a lien on such real estate, and be collected in the same manner that other delinquent taxes on land are collected; and when so collected shall be paid over to the county treasurer as other school taxes."

The last named section makes no distinction between delinquent and current taxes, so far as the duties of the collector are concerned, in making remittance to the respective treasurers.

Section 9950 Laws of Missouri 1933 page 427, authorizing county courts to compromise back taxes, contains the following proviso,

"#***** in case said court or other proper officer shall compromise and accept a less amount than shall appear to be due on any tract of land

or town lot, as charged on said 'back tax book' or recorded list of delinquent land and lots in the collector's office, it shall be the duty of said court or other proper officer to order the amount so paid to be distributed to the various funds to which said taxes are due, in proportion as the amount received bears to the whole amount charged against such tract or lot."

Taxes are to be collected and paid into the respective funds for the purposes for which such taxes were levied. The fact that the taxes are not paid when they become due does not mean that they lose their identity as taxes nor that the proceeds thereof, when paid, do not follow the channels provided for when such taxes were levied. While there is some confusion in the language of Section 9555 we are of the opinion that back taxes are to be collected and distributed to the particular funds for payment of which they were assessed and levied, and that taking the statutory law of the state as a whole, that is the meaning of Section 9555.

- (11) In any event, can a school board authorize their treasurer to set aside money, from their regular current operating money into a fund which has no statutory recognition which they name "reserve" which is not intended to support any particular item or fund, when the result of such action on the part of the board operates to eliminate the payment of the salary of the teachers' contract and only tends to bring payment of salary under teachers' contract to a minimum, by reason of a stipulation in said contract

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that requires the teacher to take a reduced salary when operating money for fiscal school year is depleted. In other words can a school board juggle current operating money into non-statutory funds so that said money loses its identify as operation money, and requires teachers to take their pay on the contract contingency that there is no balance in the operating fund.

A school board has no power to authorize its treasurer to set aside money into any fund other than the funds provided for by statute, whether such money comes from the regular current operating moneys or otherwise. We are not assuming that any school board has or will "juggle" any of the funds of the district. School boards perform a gratuitous service and often under difficult and embarrassing circumstances. The mistakes made ordinarily are honest mistakes, but even good faith will not excuse school boards from following the plain mandates of the statutes.

Very truly yours,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.

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