

SCHOOLS--INCIDENTAL EXPENSE: Repairs and replacements to building should be paid out of building fund, and if there is not enough money in the building fund the same may be transferred out of the incidental fund. However, in arriving at the rate of tuition moneys transferred or that will be transferred out of the incidental fund to the building fund should not be included.

February 7, 1935.

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Mr. J. E. Mathews, Secretary
Kearney Public Schools
Kearney, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Would your office please give us an opinion what constitutes incidental expense. For instance, a school may run a building levy each year for repairs etc., and they have repairs each year, as most schools do. Should those items of expense be counted in getting the cost, per pupil?

"We must set the rate of tuition in our school from year to year and cannot go beyond the cost.

"We would greatly appreciate your opinion and help."

I.

INCIDENTAL EXPENSE.

The Statutes of Missouri do not define incidental expenses, however, Section 9312 R.S. Mo. 1929, provides among other things for an incidental fund. In State ex rel. Marlow v. Himmelberger-Harrison Lumber Co. et al. 88 S. W. (2d) 750, the Supreme Court of Missouri said the following at page 753:

"We find that section 9312, R. S. 1929 (Mo. St. Ann. Sec. 9312), provides for dividing school revenues into three funds, designated as teachers' fund, incidental fund,

and building fund, and that '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." The incidental fund is derived wholly from taxes levied for incidental expenses, except that it is provided by said section '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.'

Section 9214 R. S. Mo. 1929 provides as follows:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county clerk an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, or, when a longer term has been ordered by the annual meeting, for the time thus decided upon, together with such other amount for purchasing site, erecting buildings or meeting bonded indebtedness, and interest on same, as may have been legally ordered in such estimate, stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount."

Section 9226 R. S. Mo. 1929 provides as follows:

"The board of education or directors

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of any school district in this state shall, whenever in their judgment it becomes necessary, or they be requested, by a petition of ten taxpayers of any such school district, to increase the annual rate of taxation for the purpose of paying for school building sites, whether the same have been purchased or condemned, for buying or erecting school buildings in such districts, or repairing or furnishing such buildings, * * * determine the rate of taxation necessary to be levied within the maximum rates prescribed by the constitution, and as therein limited for such purposes, and shall submit to the voters of such school district, * * * ."

From the above it is to be noted that the incidental fund is derived wholly from taxes levied for incidental expense, and that the Board of Directors have the power to transfer from the incidental fund to the building fund sums of money as may be necessary for the ordinary repairs of school property, thus it would seem logical that repairs and replacements should be made from the current building fund, and if repairs and replacements are to be made, the money should be transferred out of the incidental fund (if there is not enough in the building fund), and the money placed in the building fund.

We define incidental expenses then to mean expenses necessary to give instruction to the pupils -- a few of such expenses being wages of janitors, engineers, caretakers, etc., fuel, lights, power, janitors' supplies and repairs and replacements for instructional apparatus. Repairs and replacements to the building such as roofing and painting etc. should be paid from the building fund, and if there is not enough money in the building fund the amount necessary to do the work should be withdrawn from the incidental fund and placed over in the building fund.

Mr. J. E. Mathews

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From the above and foregoing it is our opinion that repairs and replacements (other than replacements for instructional apparatus) should be made from the current building fund, and that in figuring the per-pupil cost for the rate of tuition in your school you should not include repairs and replacements that are to be paid from the building fund, or from moneys taken from the incidental fund and placed in the building fund. The amount, if any, that will be transferred from the incidental fund to the building fund should not be included when you arrive at the rate of tuition. Section 16, Laws of Missouri 1931, page 343 provides amended laws of 1933, page 393 in part provides?

"* * * but the rate of tuition paid shall not exceed the per-pupil cost of maintaining the school attended*
* * * and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental expenses."

Yours very truly

James L. HornBostel
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

JLH:H