

SCHOOLS: Board of directors have no power to repair roads in front of school buildings, out of incidental fund.

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February 12, 1935.



Mr. J. S. Maxwell
County Superintendent
Johnson County Public Schools
Warrensburg, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Will you kindly advise me regarding the following:

1. Can a school board legally spend money from the incidental fund to help repair a public road on which the school property is located, and which the children of the district travel to and from school?

2. Should money be spent in the above manner, can any recourse be taken against said board."

Section 9311, R. S. Mo. 1929, in part provides:

"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, either for services as teacher, for material purchased for the use of the school, or material or labor in the erection of a schoolhouse for said district--

"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, R. S. Mo. 1929, provides in part as follows:

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

In State ex rel. Marlowe v. Himmelberger-Harrison Lumber Co., et al, 58 S. W. (2d) 750, l. c. 753, the Supreme Court of Missouri said:

"* * * 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, * * * 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 9226, R. S. Mo. 1929, provides in part as follows:

"The board of education or directors 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, (or for building, repairing and maintaining foot bridges over running streams) determine the rate of taxation necessary to be levied within the maximum rates prescribed by the Constitution, and as therein limited for such purposes, * * *."

The board of directors are trustees of school funds and their powers are limited to those expressed in the statute. The duty of the board of directors primarily is to provide for educational instruction to pupils. You state that moneys were taken from the incidental fund in order to repair a public road, and we assume that it was located in front of the school house. We do not find any statute or authority, expressed or implied, that would permit a school board to spend money out of the incidental fund in repairing a public road. Upon complying with Section 9226, supra, they may build and maintain foot bridges over running streams. However, we do not believe that that section could be given as authority to repair a road out of the incidental fund. Facts might present themselves in a given case where it would be necessary for ingress and egress to the school property, that a pathway or roadway be constructed, and, if such was done, it would be lawful, yet payment for the work would not come out of the incidental fund.

We understand the facts as stated in your letter that the school board merely improved the public road running alongside of the school house, out of the incidental fund, and if such is true, in our opinion, there has been a misapplication of funds on the part of the board of directors.

In Consolidated School District No. 6 v. Shawhan et al, 273 S. W. 182, the Kansas City Court of Appeals, page 184, 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."

And further,

"The law as stated in the section last mentioned is reflected in the opinion of this court in Cleveland Village School District v. Zion, 195 Mo. App. 299, 304, 190 S. W. 955, 957, where it is held that:

'* * * 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.'

It is likewise true, and for the same reason, that money in the teachers' fund may not be used in the building fund. That this was done in the case at bar stands admitted. Defendants contend they

"are not liable therefor. We think the Supreme Court settled this point against defendants' contention in Knox County v. Hunolt et al., 110 Mo. 67, 19 S. W. 628, where it is said:

'Now while the county court and the judges thereof have vested in them discretionary powers as to the management of this county school fund for school purposes, they have no discretion whatever as to the uses to which it can be applied. The use of the fund for the payment of ordinary county debts was an act in direct violation of the constitution and laws creating that fund, and was, therefore, nothing short of malfeasance. That the judges would be liable in a private suit to persons especially injured for such a violation of law is clear, and we can see no reason why they are not liable to the county. * * * The county court and the judges thereof were the agents of the county, but they were agents appointed by and under the general laws. Their authority is limited and defined by law. As the defendants have misapplied this fund, and that, too, without any authority of law whatever, they must be held accountable to the county as trustee of the fund for such unlawful act. As they had no discretion by which they could apply the fund to the payment of ordinary county debts, it can make no difference that the act was not corrupt or a willful violation of the law, and so the trial court ruled. This fund should be replaced by those who diverted it.'

Mr. J. S. Maxwell

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In answer to your second question, it is our opinion that recourse to be taken against said board to recover the money would be an action at law.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JLH:EG