

SCHOOLS: Money found in the teachers' fund may not be transferred to either incidental fund or building fund, directly or by subterfuge.

11-27
November 27, 1935

Hon. J. T. Pinnell
Prosecuting Attorney
McDonald County
Pineville, Missouri



Dear Sir:

This is to acknowledge your letter dated November 19, 1935, as follows:

"During the year 1934 and prior years, some of the rural school districts in this, McDonald County, accumulated surpluses of approximately \$300.00 in the teachers' funds which up to this time are intact.

Because of better conditions, more state help etc., those funds are not and will not be needed for payment of teachers' salaries.

These same schools are greatly in need of repairs to their buildings, additional equipment, books etc., and could use such surpluses to great advantage if there is any legal way to transfer them to the incidental funds of the districts.

Can such transfer be legally made?

The County Superintendent, who requests this opinion, suggested that the districts might legally draw warrants to the teachers, on such funds, present the warrants to the

County Treasurer for payment and have the amounts credited to the incidental fund of each district.

Because of these surpluses in this county, the corporations refuse, of course, to pay a quota of school taxes equal to that paid by persons.

In the future, we will arrange, of course, so that we shall not be embarrassed (?) with such surpluses."

Section 9311 R. S. Missouri 1929 provides for the payment of district indebtedness, and said section, in part, provides as follows:

"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,

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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. 1929 provides for the form of warrant and makes provision for transfer of funds from building fund to incidental fund, under certain conditions. Said section, in part, provides as follows:

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

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

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."

It is thus seen that the above two sections define the three funds and provide the source from which each is derived. Provision is also made for transferring of funds from the incidental fund to the building fund, and vice versa, under certain conditions. However, nothing is found therein that permits the transfer of money from the teachers' fund to any of the other two funds, or vice versa.

In Consolidated School District v. Shawhan 273 S. W. 182, the Kansas City Court of Appeals had before it the question of liability of the board of directors when said directors commingled the three funds in one bank deposit and drew warrants from the one fund. The Court, at page 184, said the following:

"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."

* * * * *

"Section 11223 (9312 R.S.1929) 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 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. Humolt et al, 110 Mo. 67, 19 S. W. 628."

In view of the foregoing, it is our opinion that moneys in the teachers' fund may not be legally transferred to either the incidental or building fund. It is our further opinion that said transfer may not be made by subterfuge, that is, by drawing warrants to the teachers and have the teachers present the warrant for payment and deposit the money in some other fund.

We cannot understand why corporations should refuse to pay taxes levied against other persons merely because there is a surplus in one fund, namely, the teachers' fund. We are cognizant of the fact that corporations, especially public utilities, adhere to the construction that assessments on their distributable property for school purposes, should be on the basis of the amount of money necessary for school purposes, but see our opinion inclosed herewith dated November 23, 1935, to Hon. J. R. Oliver, Clerk of the County Court of Dunklin County, wherein we specifically held

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that the levy is on the average school tax rate and not on the amount necessary to operate the school.

Yours very truly,

James L. HornBostel
Assistant Attorney General

APPROVED:

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

JLH:LC

Inclosure