

SCHOOLS: Section 9357, R. S. 1929, and Section 19, Laws of Mo. 1931, page 346, provide building aid to certain districts and allow participation in both.

August 27, 1936.

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Honorable Lloyd W. King  
State Superintendent  
Department of Public Schools  
Jefferson City, Missouri

Dear Mr. King:

We are in receipt of your letter wherein you inquired:

"Please advise this Department concerning the relation of Section 9357, R. S., 1929, and Section 19, Laws of 1931, p. 346, for granting state aid to schools when school buildings are erected. Wherein does the granting of building aid under one law limit or prohibit the granting of aid under the other?"

Section 9357, R. S. Mo. 1929, reads as follows:

"Whenever a district organized under the provisions of this article has secured a site of not less than five acres for the central high school building of said district and has erected thereon a school building, suitable for a central school and containing one large assembly room for the meeting of the citizens of the district and has installed a modern system of heating and ventilating, the state shall pay one-fourth of the cost of said building and equipment: Provided the amount thus paid by the state shall not exceed two thousand (\$2,000.00) for any one district. The state of Missouri shall, out of the general revenue fund of the state, make adequate

appropriation for carrying out the provisions of this section and the money due any district shall be remitted by the auditor to the county treasurer of the proper county on receipt of a certificate from the state superintendent of public schools stating that the conditions herein prescribed has been complied with."

Section 19, Laws of Missouri, 1931, page 346, reads as follows:

"There shall be paid to any consolidated or enlarged school district in which a new school building has been erected in accordance with plans approved by the state superintendent of schools, the sum of \$1,000.00 for each school building abandoned on account of such new building. This amount shall be paid in the same manner as other state apportionment aid and at the time of the next annual apportionment following the opening of school in the new building and the abandonment of the school building or buildings: Provided, however, that any consolidated district receiving building aid under the provisions of this section shall not receive building aid under section 9357, and such districts as elect to receive building aid under said section 9357 shall not be entitled to aid under this section."

Section 9357 was enacted by the General Assembly in 1913 (Laws of Mo. 1913, page 724) and in the 1919 revision was placed in Article 4, Chapter 102 relating to "Laws applicable to city, town and consolidated schools." Section 9357 is a state aid to a district when it erects a central high school building according to certain specifications and contains a modern system of heating and ventilating. The State obligated itself to pay one-fourth of the cost of said building provided

that said one-fourth did not exceed \$2,000.00 for any one district. Section 9357 is clearly an aid to the district and once received no further aid can be granted under said section. See our opinion dated August 30, 1935, to Honorable L. O. Gillihan, Prosecuting Attorney, Daviess County.

In 1931 the Legislature enacted Section 19, which is also a state building aid to consolidated or enlarged school districts. A consolidated or enlarged school district does not receive the aid provided for by section 19 unless buildings are abandoned because of the erection of new buildings. Nowhere in Section 19 are the words "central high school building" used, nor is it mandatory that the new school building be a central high school building. It could be an elementary school building. While Section 19 contains the following proviso:

"Provided, however, that any consolidated district receiving building aid under the provisions of this section shall not receive building aid under section 9357, and such districts as elect to receive building aid under said section 9357 shall not be entitled to aid under this section.";

yet, we do not believe that the Legislature intended to make the aid granted by virtue of Section 9357 and the aid granted by Section 19, to be separate and distinct aids to the extent that the receiving at one time the aid provided in one section, barred the receiving at a later time the aid provided in the other section. We believe that the above proviso merely incorporated Section 9357 into and made it a part of Section 19 for the reasons stated in State ex rel. School District of Kansas City v. Lee, 66 S. W. (2d) 521. In said case the Supreme Court of Missouri, en banc, had under consideration the proviso found in Section 13. The court ruled as follows (p. 523):

"Thereafter, and immediately following said last-named provision, it is provided in said section 13 as follows:  
'Provided, that special state aid shall continue to be apportioned as now or hereafter provided by sections 9220, 9223 and/or 9431 Revised Statutes 1929.'

"The district contends that the special aid provided in section 9220 (Mo. St. Ann. Sec. 9220, p. 7089) is excepted from the provisions of the act of 1931 by the above-quoted clause. The superintendent contends that by reference section 9220 is incorporated into, and made a part of, said act.

"We are inclined to the view of the superintendent. The mere use of the word 'provided' does not convert the words following into a 'proviso' in the strict legal sense. The word may be used in the conjunctive sense. *Castilo et al. v. State Highway Commission*, 312 Mo. 244, loc. cit. 269, 279 S. W. 673. We think it was so used and that the Legislature intended by said clause to incorporate section 9220 into and make it a part of said act. The rule is stated by a standard text as follows: 'Statutes which refer to other statutes and make them applicable to the subject of the legislation are called "reference statutes." Their object is to incorporate into the act of which they are a part the provisions of other statutes by reference and adoption. Reference statutes are of frequent use to avoid encumbering the statute books by unnecessary repetition and they have frequently been recognized as an approved method of legislation, in the absence of constitutional restrictions.' 25 R. C. L. p. 907."

A district having received aid under Section 9357 for the erection of a central high school building could never again receive aid under that section. However, the receiving aid under Section 9357 would not, in our opinion, bar the district from receiving aid for abandonment of school houses by virtue of Section 19. The aid under Section 9357 is for the erection of a central high school building, while the aid provided for by Section 19 is for the abandonment of school buildings by the erection of a new building. If a district desires to erect

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a central high school building and abandon four or five other school buildings, such could exercise an option and take under Section 19 or could take under Section 9357. And if a school district exercised its option and took under Section 9357 it could not receive aid under Section 19 for the same purpose. However, a school district could erect a central high school building and receive aid under Section 9357 and then in the future erect a new building and abandon an old building and yet receive aid under Section 19, in our opinion.

It is our further opinion that while Section 9357 bars a district from participating in said aid only the one time, or until it receives the maximum amount of \$2,000.00, yet, it could participate in the aid provided for in Section 19 as many times as it erects a new building and abandons old buildings, provided such district does not participate in the two aids at the same time.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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

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