

- SCHOOLS: (1) Warrants may be issued only against the income and revenue of the current year, which includes back taxes which have no warrants against them.
- (2) What constitutes income and revenue.
- (3) Who can stop payment on warrants.

May 11, 1936.

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Mr. Kenneth Ogle,
West Plains,
Missouri.

Dear Sir:

We have your letter of recent date, which reads as follows:

"We have in this county several warrants which are in my way of figuring for more than the revenue for the year in which they were written. For instance, a district writes warrants to a teacher for more than the state aid, railroad and telegraph, county interest, township interest and the levy for the year times the valuation.

"I would like to get your interpretation of section 9233 of the 1933 school law. I am especially interested in the interpretation of 'income and revenue' as used in this section.

"Can a school board legally issue warrants against taxes which are due the district for years prior to the current school year providing there are no outstanding warrants against these back taxes?

"In other words, is the county treasure allowed to cash warrants on a district when the warrants for the school year 1931-1932 (teacher's fund) were for more than the state aid, local tax, and the other sources provided by law? These items of revenue amounted to \$573.80. Will all back taxes which were on the books at the time these warrants were written be applied toward payment of warrants in excess of \$573.80 for the year 1931-32.

"Can I as County Superintendent stop payment on warrants which have been written to a company that was not registered with the Secretary of State at the time the warrants were written? Is the representative of such company who endorses these warrants personally liable in case the district refuses to pay?"

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I.

It is a settled rule in Missouri that a school district cannot write warrants for more than the income and revenue for the year. Sec. 9233 R. S. Mo. 1929, states:

"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;* * *."

The rule is laid down by implication in *Jacquemin v. Andrews*, 40 Mo. App. 507, wherein the court held that,

"If the directors limit their drafts for any school year on this fund to the amount thereof derived from all sources for that year, it is not believed that because there is no money in the fund at the exact date of any warrant, and they knew this fact, this would be such an unauthorized exercise of power as to make them personally liable for the amount of the warrant so drawn. For aught that appears by the petition in this case, there may have, subsequently to the date of said warrant, come into the hands of the county treasurer money of this fund out of which the same could have been paid.* * *"

II.

The second question concerns the interpretation of income and revenue as used in Sec. 9233, supra.

In Sec. 9312 R. S. Mo. 1929, is set forth the fund to which the income is to be applied and thereby sets forth what constitutes income and revenue.

"The warrants thus drawn* * *shall be signed by the president of the board and countersigned by the district clerk.

"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,

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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, school house 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."

Included in "may hereafter be received by such school district" are Sec. 9959, overplus in rate of real estate for taxes; Sec. 9037, penalty of utility company on its failure to make statement of property owned; Sec. 10029, taxes from railroad.

III.

The third question is to whether teachers' warrants can be drawn on back taxes of years which have no warrants outstanding against them.

Sec. 9312 R. S. No. 1929, says in part:

"... 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."

As to the disposition of this money, in State v. Rowan, 294 S.W. 1.c. 106, the court held:

"The evidence showed that \$927.35 was received by the district from railroad taxes, and the sum of \$317. remained in the treasury from the year 1925. This money would go by law only to the Teachers' fund."

Therefore, if the taxes have been paid and the cash is in treasury, then teachers' warrants may be written against them.

If the taxes have not been collected, but are still delinquent, then the question takes on a different aspect. It becomes now the inquiry as to whether it can be reasonably anticipated that the delinquent unpaid taxes will

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be collected that year so that warrants may be written against them. The cases dealing with the right of a school district to anticipate revenue are few; the vague case of *Jacquelin v. Andrews* quoted above, being one in which the point is actually discussed. We are forced therefore to refer to decisions on similar provisions of the law of Missouri, in order to obtain the viewpoint and reasoning of the court in such analogous situations.

As the court in *State v. Woodson*, 128 Mo. 497, says:

"Statutes on cognate subjects may be brought within the range of the construing vision as needed auxiliaries in the work of interpretation."

See also *Sutherland on Statutory Interpretation* #443.

Article 10, Section 12 of the Constitution of Missouri reads as follows:

"No county, city, town, township, school district or other political corporation * * * shall be allowed to become indebted in any manner or for any purpose to any amount exceeding in any year the income and revenue provided for the year."

The court in *Holloway v. Howell County*, 240 Mo. 601, states the purpose of Constitutional provision:

"The theory of our present system of county government is that counties must run their business affairs on the 'cash system'. Running in debt is easy and pleasant while it lasts. Paying is 'another story.'"

The pleasure of debt making is denied by law to Missouri counties, they can anticipate their revenue but only for the current year.

In *Book v. Earl*, 57 Mo. 246, the court says:

"The evident purpose of the framers of the Constitution and the people who adopted it was to abolish in the administration of county and municipal government the credit system, and establish the cash system * * * by limiting the expenditures in any given year to the amount of revenue which such tax would bring into the treasury for that year.* * * Under this section, the county court might anticipate the revenue collected and to be collected for any given year, and contract debts for ordinary current expenses which would be binding on the county to the extent of the revenue provided for that year."

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Cited with approval, State ex rel. v. Johnson, 162 No. 621, and Trask v. Livingston County, 210 No. 532.

Judge Graves, in State ex rel. v. Hackman, 28 No. 686, l.c. 699, clearly presents the point when he says:

"Nor did we mean each debt should be met, but we did mean that during the fiscal year the cash would be available to meet the debt if the anticipated revenue was collected and rightfully disbursed. In other words, we have dealt with the matter upon the basis of a year's business and the term 'cash basis' has been used in the sense that the anticipated revenues of the year should at least equal the contracted debts of the year."

In Decker v. Diermer, 229 No. 296, the surplus funds of past years were accumulated and used to pay for a courthouse. These funds were, from all indications, cash, i.e. taxes that had been collected. The court held that such use was a proper one.

Likewise, in State ex rel. v. Appleby, 136 No. 408, and Holloway v. Howell County, 240 No. 601, the excess funds out of which the warrants were to be paid were funds on hand and not outstanding taxes that were delinquent from past years.

In view of the above cases, it is apparent that the school district like the county is to be on a cash basis, and the right to anticipate the revenue is permitted only for convenience sake, and its use should be cautiously exercised, and its scope not broadened beyond the original allowances.

Taxes that have not been paid and are delinquent, from a logical and certainly even more so from a practical viewpoint, cannot be anticipated that they will be paid in the ensuing year. Taxes for the present year are unknown quantity and the presumption is that they will be paid. Once, however, the status of the tax has become known, i.e. by payment or default, then this presumption no longer remains, and if there is a failure of payment then there no longer remains grounds for anticipating payment.

IV.

The last question is whether a county superintendent may stop payment on a warrant issued to a book company not registered with the State Superintendent.

We refer you to Secs. 9458-9504, which read as follows:

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"Sec. 9485. Before the publisher of any school textbook shall offer the same for sale to any county school textbook commission or board of school directors in the state of Missouri, and at the time of the filing of such textbook in the office of state superintendent of public schools, said publisher shall pay into the treasury of the state of Missouri a filing fee of ten dollars for each book offered by said publisher. A series of books by the same author and upon the same subject shall constitute one book for this purpose. The fees thus received shall constitute a fund out of which, upon requisition made by the state superintendent of public schools, shall be paid the expenses of publishing lists and other information for the use of the county school textbook commissions, clerk hire and other necessary expenses in connection with the filing of all textbooks submitted for adoption in the state of Missouri. Any balance remaining in such fund shall be, upon the first of January of each year, placed to the credit of the general revenue fund of the state."

"Sec. 9504. Any publisher who shall sell, or offer for sale or adoption in this state, school textbooks of any kind without first obtaining license therefor under this article, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred dollars and not more than five thousand dollars."

The County Superintendent cannot, however, stop payment on a warrant issued before the above law has been complied with. The warrant is signed by the president and the district clerk under Sec. 9312 H. S. No. 1929, and they are the ones to stop the payment on the warrant.

As to the liability of the representative of the book company, this is a personal matter on which we cannot pass.

CONCLUSION.

It is, therefore, our opinion that the county cannot write warrants in excess of the taxes and other income of the district. That income

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and revenue in Sec. 9233 R. S. No. 1929, are explained by the sources mentioned in Sec. 9312 R. S. No. 1929.

That back taxes, if collected, against which there are no warrants may be applied to the payment of teachers' salaries. If not collected, but still outstanding, then warrants cannot be issued against them. That a county superintendent cannot stop payment on a warrant, it being the duty of the president and district clerk.

Respectfully submitted,

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JBT/LW

APPROVED:

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