

SCHOOLS: School fund provided for by Sections 6 and 7 of Article XI of the Constitution, cannot be used for any purpose other than support of free public schools and the State University.

February 16, 1937.



Honorable James S. Rollins  
Senator, Tenth District  
Missouri Senate  
Jefferson City, Missouri

Dear Senator Rollins:

This is to acknowledge your letter dated February 12, 1937, as follows:

"Kindly give the Appropriation Committee the opinion of your department on the following:

- "1. Can the Legislature go back to the Constitutional 25% on school monies without legislative action other than that in an appropriation act.
- "2. What use can be made of the school monies other than for use by the Elementary Schools.

"The Committee will greatly appreciate this information at your earliest convenience."

I.

Can the Legislature go back to the Constitutional 25% on school monies without legislative action other than that in an appropriation act?

We assume that you desire to know if there is any statute which must be amended in order to give to the schools only twenty-five per cent as provided for in Section 7, Article XI, Constitution of Missouri. There is no statute that will have to be amended if the Legislature desires to revert to the twenty-five per cent of the state revenue provided for in the Constitution. The Legislature biennially ever since 1877 by an act and an appropriation provided for the moneys to the public school fund. State ex rel. v. Gordon, 266 Mo. 394, 409, 410.

In 1935 the 58th General Assembly enacted the following law, found at page 9, Section 1:

"The State Auditor is hereby authorized and directed to set aside one third (1/3) of the ordinary state revenue paid into the State Treasury for the period beginning March 1st, 1935, and ending March 1st, 1937, into a fund to be known as the public school moneys fund; same to be used for the support of free public schools."

Section 2,

"There is hereby appropriated out of the public school moneys fund created by the preceding section, any and all sums placed in said fund for the support of the free public schools from March 1st, 1935; said sums to be apportioned and distributed for the support of the free public schools as provided by law."

The above act carried an emergency clause and was approved February 28, 1935.

It is thus seen that the Legislature biennially enacts a law directing the State Auditor to set aside a portion of the ordinary state revenue and creates a fund known as the public school moneys fund, and then appropriates said moneys for the support of the free public schools. Thus, the act of the 1935 Legislature relating to the duty of the State Auditor

to set aside so much of the ordinary state revenue for the public schools, expires as a matter of law. Consequently, the Legislature must enact a new statute placing the same duty upon the State Auditor, relating to the setting aside of so much of the ordinary state revenue for free public schools. If the Legislature desires it may direct the State Auditor to set aside only twenty-five per cent, or any other per cent greater than twenty-five per cent, of the ordinary state revenue for the support of free public schools. In other words, the General Assembly now in session must direct what per cent of the ordinary state revenue the State Auditor must set aside and it is not necessary to amend or repeal any statute, but requires the enacting of a new statute.

## II.

### What use can be made of the school monies other than for use by the Elementary Schools?

Preparatory to answering your question we invite your attention to the use to which the public school fund (moneys) is now being devoted.

The Supreme Court of Missouri, en banc, in State ex rel. School District of Kansas City v. Lee, State Superintendent of Public Schools, 66 S.W. (2d) 521, said:

"In 1931 the Legislature made quite a change in the method of distributing the state school funds.\*\*The change may be indicated by summarizing the old law and the new law as follows:

#### New Law Act of 1931.

1. Equalization Aid--section 13, Laws 1931 (Mo. St. Ann. Sec. 9270n, p. 7121).
2. Teacher and Attendance--section 13, Laws 1931, and section 9257.
3. Defectives--section 13, Laws 1931, and section 9220.

4. Opportunity Rooms--section 13, Laws 1931, and section 9223.
5. Orphans--section 13, Laws 1931, and section 9431.
6. Tuition--section 16, Laws 1931 (Mo. St. Ann. Sec. 9270q, p. 7125).
7. Transportation--section 16, Laws 1931.
8. Buildings--section 19, Laws 1931 (Mo. St. Ann. Sec. 9270u, p. 7128).
9. Consolidated--section 13, Laws 1931 and section 9358."

The above shows the use now made of the public school moneys fund. None of the fund at the present time is used other than for elementary and high schools. The fund is given to elementary and high schools in the form of special aids and is apportioned to the county treasurers by the State Superintendent of Schools by virtue of Section 9257, R. S. Mo. 1929. The public school moneys fund cannot be devoted to any other use other than for the support of free public schools and the State University.

The Supreme Court of Missouri, en banc, in *Lincoln University v. Hackmann, State Auditor*, 243 S. W. 320, very forcibly defined the power of the Legislature as to what it could do with the public school moneys fund, held (p. 322):

"It results that the Legislature was without power to make the appropriation in question, and its action in the premises is in contravention of the express mandatory provisions of our Constitution."

In the *Lincoln University* case the Legislature sought to appropriate moneys for the *Lincoln University* from the public school fund. The court reviewed the constitutional provisions relating to the public school moneys fund, and held:

"It is thus seen that the income from the public school fund and the money required to be set apart from the ordinary revenue of the state must be devoted exclusively to the support of the public schools. To this there is only one exception, the State University. So that when the Legislature set apart one-third of the ordinary revenue of the state for the support of the public schools, that fund, together with the annual income from the public school fund, was devoted to the purpose designated by the Constitution, and the Legislature was without power to divert or appropriate any portion thereof to any use or purpose other than establishing and maintaining the free public schools and the State University. It must be apportioned and paid solely to the several county treasurers, except so much thereof as may be apportioned to the State University. It is apparent that the Legislature could not apportion any of this fund to the support of the State University were it not for the exception incorporated into the Constitution, for the obvious reason that it is not a part of the free public school system of the state ordained by our organic law."

The court in said case invited attention to the fact that Lincoln University was a separate "independent institution for the education of the negro race" and was "no part of the free public school system of our state for the education of persons between the ages of 6 and 20 years." The court further said that the Legislature could have established Lincoln University as a department of the State University and if such was done then Lincoln University could share in the appropriations out of the public school fund, because such would then be a department of the State University. But as Lincoln University was separate and distinct from the State University no moneys could be used from the public school fund for its support. For the Biennial 1935-1936 the University of Missouri received its moneys from the state revenue fund and not out of the one-third set apart by the State Auditor for the public schools.

Hon. James S. Rollins

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Feb. 16, 1937.

From the above it is our opinion that the school moneys provided for by Sections 6 and 7, of Article XI, of the Constitution, cannot be used for any purpose other than for the support of free public schools and the State University.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General.

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