

**SCHOOLS:  
AUTHORITY OF  
DIRECTORS TO ISSUE  
COMMERCIAL PAPER:**

School directors are only authorized to issue warrants as provided by statute and are not authorized to issue commercial paper for payment of erection of school buildings. Directors are not authorized to issue warrants in anticipation of revenue for any year except the current year.

September 13, 1938

9-15

Mr. M. L. Fishback, Secretary  
Kingsville Schools  
Consolidated District No. 7  
Kingsville, Missouri



Dear Sir:

This is in reply to yours of recent date requesting an official opinion from this department based upon the following letter:

"Our District (Kingsville Consolidated Number Seven) have voted transportation and have abandoned 5 rural schools within the district, from which according to the Statutes the District is entitled to \$1000.00 each or a total of \$5000.00. This amount is acknowledged due the District by the State Department of Public Schools. We have made an application to the PWA asking for a grant to match the \$5000.00 due us from The State, with which we contemplate the building of two rooms and other improvements approved by The Department of Public Schools to our present system. The Government sent a representative to ascertain where we were going to acquire the funds to match their grant. The Board of Education had made arrangements with a Bank in Holden where on demand, by the Board signing the note, the Bank would loan this amount to our District.

We know that the law and construction of the Constitution provides that no school district shall be allowed to become in-

debted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year without the consent of two thirds of the voters and are very strict in holding what would be included in the term income and revenue provided for the year.

In view of the law, the Board hesitates to take this step, and the question is whether this would be an indebtedness or anticipated revenue?

We feel that this is anticipated revenue, or a gift from The State of Missouri and we are in no way contracting a debt that is binding on the taxpayers of our district. This amount (\$5000.00) will not be paid by the State before August 1939.

If the board is not violating any law in securing this loan from the Bank, would the Board borrow \$5000.00, or \$5000.00 less the interest for one year?

Should this request come through a prosecuting attorney please send through Chamberlain, Prosecuting Attorney of Cass County, if not I would appreciate your opinion sent direct to me."

Your request involves the right of the directors of a school board to bind the district for payment of an obligation in excess of the anticipated revenue for the current year in which the indebtedness is incurred and becomes due.

The directors of a school district are limited in their powers as to the spending of school moneys by Section 12, Article X, of the Constitution, which is as follows:

"No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner

or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the consent of two-thirds of the voters thereof voting on such proposition, at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness, except that cities having a population of seventy-five thousand inhabitants or more may, with the assent of two-thirds of the voters thereof voting on such proposition at an election to be held for that purpose, incur an indebtedness not exceeding ten per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring of such indebtedness; such proposition may be submitted at any election, general or special; \* \* \*."

In the case of Tate v. School Dist. No. 11 of Gentry County, 23 S. W. (2d) 1. c. 1022, the court in discussing the provisions of the Constitution as it applies to the authority of schools to spend moneys, said:

"Section 11, art. 10, of our State Constitution, is a limitation upon the annual rate of taxation to be levied for county, city, town, and school purposes, and limits the annual rate of taxation for school purposes in school districts, other than those composed of cities of 100,000 inhabitants, or more, to 40 cents on the hundred dollars valuation of the taxable property in the school district. Section 12, art. 10, of the

Constitution, is a limitation upon the annual debt-creating power of such political corporations. It provides: 'No county, city, town, township, school district or other political corporation or subdivision of the State shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting (on such proposition) at an election to be held for that purpose. \* \* \*'

It is contended by appellant that the contract between plaintiff and defendant school district, dated December 18, 1924, created a debt of the school district in anticipation of the income and revenue of the school district to be provided for the school year 1925-26, which, by statute (section 11155, R. S. 1919), 'shall commence on the first day of July and end on the thirtieth day of June following'; \* \* \*"

As is stated in the above case, the school year begins July 1st and ends on June 30th following. It is for that period that the board of directors must anticipate the revenue when considering entering into a contract incurring the spending of district moneys, and if the contract is one which will be completed during such year, then the revenue for that year is the income of the district which the board must take into consideration as the limit to which it may incur debts.

Section 9233, R. S. Me. 1929, provides in part as follows:

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected; but the income from state, county and township funds shall be applied only to the payment of teachers' warrants, issued by order of the board to legally qualified

teachers for services rendered according to law. 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 office of a school director is purely statutory and he must look to the statutes and the provisions of the Constitution for his authority. In the case of Consolidated School District No. 6 v. Shawhan, 273 S. W. 1. c. 184, the court said:

"Plaintiff district is a corporation created by statute; its board of directors is what the statute makes it, having only such powers and functions as are expressly delegated to it."

You speak in your request of the board of directors executing a note to the bank, payable on demand, for the amount of money which it expects to receive from the State Department of Education in August of 1939. From our research on this question, we find that the statutes do not authorize a board of directors to execute negotiable paper such as a note and bind the district. In Vol. 56 C. J., page 571, Sec. 688, the rule is laid down as follows:

"As a general rule a school district or other local school organization has no power to make and issue, or indorse, commercial paper, unless authority to do so is expressly granted by statute or by necessary implication therefrom."

The only obligations such directors are authorized to execute, and by which the district is bound, are the warrants issued under authority of Sections 9311 and 9312, R. S. Mo. 1929.

**Section 9311 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, 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: Provided, however, that no order for the payment of teachers' wages shall be drawn in favor of any person not holding a certificate of qualification, signed by the county superintendent, state superintendent or a teachers college of this state, or in favor of any teacher delinquent in his monthly or term reports; and further provided, that before drawing any such warrant, the president of the board shall first visit the office of the county or township treasurer, and record his signature in a book to be kept in the office of said treasurer for that purpose, and for making such trip such president of the board shall be allowed one dollar per day and his necessary traveling expenses, payable out of the incidental funds of his district."

**Section 9312 provides in part as follows:**

"The warrants thus drawn shall be in the following form, and shall be signed by the

president of the board and countersigned  
by the district clerk:

TEACHERS' FUND.

\$ \_\_\_\_\_ No. \_\_\_\_\_  
Treasurer of \_\_\_\_\_ county, Missouri:  
Pay to \_\_\_\_\_, or order, for services  
as teacher in district No. \_\_\_\_\_,  
dollars, out of any funds in your hands for  
the payment of teachers' wages belonging to  
said district.  
Done by order of the board, this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_.  
\_\_\_\_\_, president. \_\_\_\_\_, clerk.

\* \* \* \*

No treasurer shall honor any warrant unless  
it be in the proper form and upon the ap-  
propriate fund; and each and every warrant  
shall be paid from its appropriate fund, and  
no partial payment shall be made upon any  
school warrant, nor shall any interest be  
paid upon any such warrant: \* \* \* \*."

If the school district is not bonded beyond the  
constitutional limit, then by proceeding as directed by  
Article X, Section 12, of the Constitution, the voters of  
the district can authorize the board to execute obligations  
within the limitations set out in said constitutional  
provision, but we are convinced that the board, on its own  
initiative, has no authority to execute a note payable on  
demand and bind the district for the payment of same.

If the district does not have the money in its treasury  
at the time the contract is entered into, and if the contract  
is to be completed before June 30, 1939, and if the board  
anticipates that it will have the money in the treasury be-  
fore the end of the fiscal year, then it can issue a warrant  
for the payment of the same in the form prescribed by Section  
9312, supra, and such warrant will be legal and payable out  
of the revenues for the current year when a sufficient amount  
comes into the treasury, but there is no authority to post-  
date said warrant or pay interest on same.

While the \$5,000 that the district expects to get from the State for the building may be classed as anticipated revenue, yet as it is not anticipated revenue for the year ending June 30, 1939, therefore it could not be taken into consideration for an indebtedness incurred for the current year and which is to be paid during the current year.

CONCLUSION

Therefore, we are of the opinion that the board of directors of a school district has no authority to execute a note payable on demand for moneys to erect a school building, which note is to be paid out of anticipated revenues of the district for the year following the one in which the indebtedness is incurred and becomes due and payable. We are further of the opinion that under no circumstances is a board of directors authorized to execute a note and bind the district for the payment of same, but that all obligations of the district should be paid by warrants drawn as provided by the statutes.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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