

SCHOOLS: Directors of school district are not liable criminally for transferring funds indirectly from the **teachers'** fund to the building fund. The action is irregular but in the absence of any embezzlement or other crime directors are not liable.

May 6, 1938.

5-11

Honorable Harold S. Hutchison
Prosecuting Attorney
Maries County
Vienna, Missouri



Dear Sir:

This Department acknowledges receipt of your letter of May 4th, wherein you request an official opinion on certain facts relating to Lacy School District; which letter is as follows:

"I would like for your department to give me an opinion on the criminal liability of certain school directors of the Lacy School in Maries County. The facts in the case as appears from my investigation are as follows:

"John Bell was employed to teach the Lacy school for Eighty Dollars (\$80.00) a month by a verbal contract. On the opening day of school, the school house was in such condition that the said John Bell informed the directors that it was unsafe for the children because of falling plaster. At that time Lacy school district had something over Five Hundred Dollars (\$500.00) in their teachers fund and only had about Fifty Dollars (\$50.00) in the incidental fund. The directors had been advised by the County Superintendent of Schools to raise their teachers salary that year so on the opening day of school, they entered into an agreement with Bell giving him One Hundred Dollars (\$100.00) a month, Fifteen Dollars (\$15.00) of which was to be returned to the directors for the purpose of repairing the

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school building. Material was ordered from Powell Lumber Company in the amount of One Hundred Sixteen Dollars and Forty Four Cents (\$116.44) and Bell at the end of each month made out a check to C. R. Moreland for Fifteen Dollars (\$15.00) which amount was mainly taken to St. James by C. R. Moreland and turned over to the lumber company, indorsed by them, and for which they issued a receipt to the Lacy School District. My investigation is that every dollar of the money so transferred went into the school building.

From the facts as you present it is manifest that the action of the members of the board in pursuing the course outlined in your letter has been irregular, contrary to the spirit of the law and doing indirectly what could not, under the statute, have been done directly. In support of this statement we herewith quote the pertinent part of Section 9312, R. S. Mo. 1929, as follows:

"* * * * * 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, 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, schoolhouse 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. No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate 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: 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: Provided further, that by a majority vote of the school board tuition fees may be used to liquidate indebtedness accrued in the building fund."

It was held to the effect in the decision of Consolidated School District No. 6 v. Shawhan, 273 S. W. 182, that the powers of the board of directors of a school district are limited to those specifically delegated to them in the statute and that moneys in the teachers' fund cannot be appropriated for any other purpose, notwithstanding that the directors may act in good faith and without willful intent.

Reference is herewith made to Section 9233, R. S. Mo. 1929, which is 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; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such funds in accordance with section 9257, and no school warrant shall bear interest."

To clarify our ultimate conclusion it is well to bear in mind the terms of Section 9209, R. S. Mo. 1929, as follows:

"The board shall have power, at a regular or special meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as teacher, nor shall the teacher serve as clerk of the district. All transactions of the

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board under this section must be recorded by and filed with the district clerk."

By admitting all the facts to be true, as stated in your letter, the ultimate question is, what, if any, criminal liability has been incurred by the directors in the transactions?

Section 9235, R. S. Mo. 1929, contains provisions wherein the actions of the teacher and the directors may be deemed a misdemeanor. Said section provides as follows:

"Any teacher who shall enter a public school in this state to teach, govern or discipline the same, before complying with the provisions of sections 9209 and 9234, shall forfeit all right, title and claim to any compensation therefor, and shall be deemed guilty of a misdemeanor and punished by a fine not to exceed one hundred dollars; and any director who shall indorse or encourage said teacher in such unlawful conduct shall in like manner be deemed guilty of a misdemeanor and punishable by a like fine."

We note that the original contract between the teacher and the directors was in the amount of \$80.00 and was a verbal contract. Later, you state that on the opening day of school another agreement with the teacher was made giving him \$100.00 a month. You do not state whether or not the last agreement was in writing in compliance with Section 9209, supra. However, it was held in the case of *Edwards v. School District No. 73*, 297 S. W. 1001 that a contract was valid between a teacher and a district by the application and acceptance thereof by the president and each director of the school district. Likewise, in the case of

McShane v. School District, 70 Mo. App. 624, it was held that the failure of the clerk to attest the contract, or failure to deposit same with the clerk, did not render it void.

We assume that the teacher possessed the qualifications as contained in Section 9234, R. S. Mo. 1929, which is mentioned in the misdemeanor section heretofore quoted, namely, 9235. Hence, it would appear that by the provisions of Sections 9209, 9234 and 9235, supra, that neither the directors nor the teacher would be guilty of a misdemeanor; therefore, they are not liable criminally.

Referring again to Section 9312, supra, there is no provision in its terms which makes it a misdemeanor for the violation of the same or for the failure of the directors of the district to follow its provisions. While it is true the acts of the directors in failing to follow the provisions of the section are illegal, yet, does that necessarily constitute a criminal offense?

The general rule relating to the situation is offered in 16 Corpus Juris, page 64, Par. 22, as follows:

"An act that is not prohibited and made punishable either by the common law or by statute or ordinance, both at the time of its commission and at the time it is sought to punish therefor, cannot be punished as a crime, and the court cannot by construction make that a crime which is not so prohibited. The prohibition must be by the laws of the state in which it is sought to punish. An act may be prohibited and made punishable either by the common law, or by statute."

There appears to be no statute which denounces the actions of the board as a crime, under the circumstances and facts which you present. Therefore, in the absence of any

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statute which denounces the actions of the board as a crime, and especially Section 9312, supra, which does not contain any expression which could be construed as a penal statute, we are of the opinion that no criminal action will lie against the directors of the school district. In view of the fact that you state in your letter that the directors did not receive personally any of the misapplied or misappropriated funds, there does not appear any evidence which would constitute a charge of embezzlement, obtaining money under false pretenses or any other crime denounced by statute or the common law.

Respectfully submitted,

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APPROVED:

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