

SCHOOLS: (1) The Board cannot transfer teachers fund to the incidental fund; (2) Board is not liable personally for balance due teacher if contract is made within the anticipated revenue from every source; (3) Treasurer cannot pay warrants of 1936 out of 1937 funds.

January 14, 1938

178

Mrs. Anice Sanders
County Treasurer
Oregon County
Alton, Missouri



Dear Madam:

This Department is in receipt of your letter requesting an opinion involving several questions. For convenience, we will separate your various questions.

I.

"If a school board ordered me to transfer teachers fund to incidental fund as a loan with no intention of paying it back would I be responsible in any way for this fund?"

We are enclosing an opinion rendered by this Department on November 27, 1935, to Honorable J. T. Pinnell, Prosecuting Attorney of McDonald County, Missouri, wherein the question of transferring of school funds is discussed. We think the same properly answers your question.

II.

"Under present conditions it is hard to determine the exact amount of state money a district will get. In case a board drew a contract for more than they can pay would the board be liable for the balance due the teacher?"

The ordinary rule of law applicable to members of school boards and other commissions is to the effect that they

are not personally liable for their actions unless actuated and motivated by fraud or corruption. Under the statement of facts which you present the Board cannot determine with any degree of certainty the amount of revenue the district will receive during the given year. We think the principles as set forth by the court in the case of Jacquemin & Shenker v. Andrews, 40 Mo. App. 507, l. c. 511, answer your second question. The court in said case said the following:

"The provisions of the school law must be construed liberally so as to give them a practical effect. It might have been that the collection of the amount of the estimate of the annual meeting, for carrying on the school for that year, was delayed for some reason or that the income into the teachers' fund from the state or county may have been delayed, by reason of the default or miscarriage of some officer intrusted by law with the collection or disbursement of this fund, and thus it may have been prevented from reaching the county treasury at the proper time. We cannot think a warrant drawn upon the county treasury, under such circumstances when there was no fund then on hand to pay it, would hardly be deemed illegal or unauthorized. 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. It is not charged in the petition that the defendants were guilty of any fraud or abuse of their trust, nor that the plaintiffs had suffered any damage or loss in consequence thereof. There is no allegation that they have, in the performance of their official function, departed from the requirements of the constitution or the statute except that they have caused a warrant to be drawn on a fund in which there was no money, at the time, and which they knew. To hold that the humble but necessary public duties of school directors can only be undertaken at the hazard of personal liability for every warrant to be drawn on the county treasury, when there does not happen to then be money in the fund against which it is drawn, is a doctrine too hard to be enforced in any court. There is no allegation of deceit or other misbehavior of these directors, which renders them liable on the warrant sued on. We think the petition states no cause of action upon these school warrants or any of them in favor of the plaintiffs, and that the judgment should be affirmed."

Therefore, in view of the above decision, we are of the opinion that the Board would not be liable personally for any balance due the school teacher. Of course, the school district would be liable for the same.

III.

"Should a treasurer pay a 1936 warrant out of 1937 funds for teacher would the treasurer be liable for this if the teacher of this year asked them to make it up?

In view of Section 12, Article X, of the Constitution of Missouri, it is the duty of school districts, as well as counties, not to incur any indebtedness to an amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters. A warrant which is issued on the current revenue for a given year should be paid out of the revenue of that year and not out of the funds for the subsequent year.

We think the ruling in the case of *State ex rel. v. Johnson*, 162 Mo. 621, l. c. 629, relating to the power of county courts to issue warrants, is also applicable to schools districts. The court said the following:

"It was then anticipated that, though the county court might not issue warrants in excess of the levy for a year's current expenses, and that a creditor might rely upon the fact that his contract was within the amount of revenue levied and provided, and trust to the power of the State to enforce its taxes, still it might happen from some unforeseen cause enough of the estimated amount of revenue might not be collected to pay all the warrants drawn against it in anticipation. Under such circumstances it has never been ruled that such a creditor's warrant was absolutely void and extinguished by the non-payment in the year in which it was drawn. On the contrary, this court has often said in no uncertain terms that it was valid and payable out of any surplus revenue in the hands of the county treasurer that might arise in subsequent years. (*Randolph v. Knox County*, 114 Mo. 142; *Andrew County v. Schell*, 135 Mo. loc. cit. 39; *State ex rel. v. Payne*, 151 Mo. loc. cit. 673;

Jan. 14, 1938

Railroad Co. v. Thornton, 152 Mo.
570; State ex rel. v. Allison, 155
Mo. loc. cit. 344; and on this point,
Reynolds v. Norman, 114 Mo. 509.)"

We are, therefore, of the opinion that the warrants issued in 1936 should not be paid out of 1937 revenue and funds. Such warrants can only be paid out of the surplus revenues of any year or from the delinquent taxes for the year in which the warrant was issued.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

OWN:EG
Enc.