

SCHOOLS:

County Superintendent of Schools not entitled to any unexpended balance in fund created by Section 9475, R. S. Mo. 1929.

May 16, 1939

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Honorable John T. McKay, Jr.,  
Prosecuting Attorney  
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Kennett, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion under date of May 3, 1939.

You inquire if the county superintendent of schools is required to turn over unexpended balance in the fund created by Section 9475, R. S. Mo. 1929.

This section requires a fee of all persons taking an examination for a teacher's certificate. The purpose of the fee is to defray expenses of teachers associations and teachers meetings and for expenses incident to grading of papers and issuing certificates of applications for licenses to teach. Section 9475, R. S. Mo. 1929, reads as follows:

"Every applicant for a certificate shall pay to the county superintendent of public schools a fee of three dollars which shall entitle him to take any and all examinations given in any calendar year. Every applicant for a renewal of his certificate shall pay a fee of one dollar and fifty cents. The fees so collected shall be used for the payment of the expenses of teachers associations and teachers' meetings authorized by this chapter at least thirty per cent. being set apart and used for this purpose--and for the expenses incident to the grading of

papers and issuing of certificates of applicants for license to teach. The county superintendent of public schools shall remit to the state superintendent five cents for each subject written by each applicant, whose papers are sent to the state superintendent of schools. The fees, received in this manner by the state superintendent of public schools, shall be used to pay the compensation of such assistants as may be necessary to examine and grade all such papers, and to pay other expenses incident to the grading of the papers submitted and recording and certifying said grades. The state superintendent of public schools is hereby empowered to appoint and pay such assistants as he may need for the examining and grading of all such papers submitted and he shall also keep an accurate account of all moneys received and disbursed by him in carrying out the provisions of this article. Any balance remaining in said fund shall be turned into the general revenue fund of the state by said state superintendent of public schools on the first day of December of each calendar year. The county superintendent of public schools shall make report of all fees collected, all amounts expended for teachers associations and meetings and for all amounts remitted to the state superintendent to the county court at its regular meeting in February of each year."

By the words, "at least thirty per cent. being set apart and used for this purpose," the Legislature placed a minimum amount to be set aside for expenses of teachers associations and meetings. However, the Legislature did not restrict the expenditure to thirty per cent. of the fund for

this purpose. It may be increased, but under no circumstances shall the county superintendent of schools fail to set aside thirty per cent. for this purpose.

In *Miller v. State*, 94 So. 706, l. c. 709, 130 Miss. 564, the court held the words, "at least four months," in a constitutional amendment providing public schools shall be maintained in each school district at least four months during each scholastic year, did not preclude them from holding school for a longer period. In so holding the court said:

"When they said 'at least four months' we understand they meant that four months was to be the minimum term; or, to put it in another way, there must be not less than four months of schooling, and, inferentially, there may be a longer term, or at least a longer term was not intended to be prohibited, either expressly or by implication."

Also, in *City of St. Charles v. Stookey*, 154 Fed. 772, l. c. 782, the court, in holding an extension of at least 60 days means an indefinite time not less than 60 days, said:

"An extension of at least 60 days is an extension for an indefinite time not less than 60 days, and after this extension was granted the contractor might have reasonably inferred, in the absence of subsequent notice to him by the city, that his time would be limited to some definite date, that a reasonable time not less than 60 days was allowed him to complete his undertaking. This was the natural meaning of the words and the true construction of the grant (*Roberts v. Wilcock*, 8 Watts & S. 464, 470; *Stewart v. Griswold*, 134 Mass. 391), and there was no error in the rulings of the court here challenged."

Therefore, in view of the foregoing, it is the opinion of this Department that the county superintendent of schools is not restricted to paying thirty per cent. of this fund for expenses of teachers associations and meetings, but must set apart that much, and if the occasion requires it he may appropriate more for this purpose.

Now we come to your main request: Is the County Superintendent of public schools, under Section 9475, R. S. Mo. 1929, required to turn over any unexpended balance in said fund?

After careful examination of the provisions pertinent to your inquiry we come to the conclusion that it is the statutory duty of the county superintendent of public schools to hold said examinations, grade papers and issue certificates to teach, with the exception of certain papers forwarded to the State Superintendent of Public Schools for grading after said examination held by the county superintendent of public schools (Sections 9470, 9471, 9474 and 9475, R. S. Mo. 1929). The following provision requires certain papers to be forwarded to the State Superintendent of Public Schools for grading. Section 9471, supra, in part reads as follows:

"\* \* \* Within three days after the close of each regular examination, the county superintendent of public schools shall forward to the state superintendent, by express or registered mail, all the papers of all applicants for first grade certificates and of all other applicants who shall request their papers to be sent to the state superintendent. Said state superintendent of public schools shall carefully grade all papers, keep a record of said grades, certify them to the county superintendent of the county in which said papers were written, and also return said papers to said county superintendent of public schools who shall preserve them among the records of his office for at least one year after the date of the examination at which they were written."

The county superintendent of schools receives an annual salary, the amount to be determined by the population of the county. Section 9463, Laws of Missouri, 1933, page 384, reads in part as follows:

"\* \* \* \* \* in counties having a population of more than twenty-five thousand and less than thirty six thousand he shall receive Two Thousand Dollars; \* \* \* \* \* of which the State of Missouri shall appropriate annually out of the general revenue fund of the State of Missouri four hundred dollars to each and every county. The county superintendent shall receive his salary monthly from the county revenue fund in the form of a warrant drawn upon the county treasurer."

Under the above provision the County Superintendent of Schools in Dunklin County shall receive \$2000.00 per annum.

It is well established in this State that an official can receive no compensation unless he can place his finger on the particular statutory provision providing for same, allowing him such compensation. This is true whether he receives an annual salary or his compensation is regulated by fees.

In State v. Wofford, 116 Mo., 1. c. 223, the court said:

"It is well settled law that no officer is entitled to fees of any kind unless provided for by statute, and that the law conferring such right must be strictly construed because of statutory origin and right. Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675; Ford v. Railroad, 29 Mo. App. 616."

See also Ward v. Christian County, 111 S. W. (2d) 182.

The only specific provision for compensation for county superintendent of schools, that we are able to find, is that allowed under Section 9463, supra. Therefore, in view of the above and foregoing, the county superintendent of schools is entitled to no more compensation than allowed in 9463, supra.

Under Section 9475, R. S. Mo. 1929, fees are paid to the county superintendent of schools for certain designated purposes, to defray expenses of teachers associations and meetings and for expenses incidental to the grading of papers and issuing certificates of applicants to teach. We need not go into expenses pertaining to teachers associations and meetings, but only as to what expenses are incidental to grading papers and issuing certificates to teach.

"Incident" is defined in Funk & Wagnalls New Standard Dictionary as follows:

"Falling upon or into something; impinging from without; as, incident rays. Likely to befall; naturally or usually appertaining or attending; as, danger incident to travel.

"Anything that takes place as part of an action or in connection with an event; a subordinate or concomitant event or act; as, the incidents of a journey; an incident of a plot. Hence, a happening in general, especially one of little importance; any event; an occurrence; as, a daily incident. Something characteristically, naturally, or legally depending upon, connected with, or contained in another thing as its principal."

In *Baltimore v. Baltimore & Ohio Railroad Company*, 77 U. S. (10 Wall), 543, 1. c. 551; 19 L. Ed. 1043, the court defined the words "and shall pay all and any expenses incident to the issuance of any bonds," as follows:

"The position taken by the City is, that the Company was bound to pay the full amount of the interest without deduction, because of the following words in the defeasance clause of the mortgage: 'And shall pay all and any expense incidental to the issue of any of the bonds.' It is, therefore, necessary to construe these words, and there is no difficulty about it, when we consider the subject-matter about which they were employed. The word 'expense' may mean one thing in one case and quite a different thing in another. Its meaning in this case cannot be mistaken.

"To carry out the arrangement between the parties required a considerable expenditure of money for printing, clerk hire, stationery, advertising and similar matters. These expenses were incidental to the issue of the bonds, and it was right and proper that the Railroad Company--the party to be benefited by the transaction--should pay them. And it agreed to do so; but this agreement cannot be extended to cover the tax in question, for in no sense is it an expense incidental to the issue of the bonds."

In Stokes v. Paschall, 243 S. W. 611, 1. c. 614, the court in construing the expenses incident to issuing of the bonds, said:

"We agree, therefore, with appellees that, in cases where a commissioners' court in the exercise of a sound discretion finds it reasonably necessary to employ bond brokers to aid in the sale of bonds of the character under consideration, they may do so, and, under the operation of the amended article 632, may lawfully pay a reasonable commission out of the proceeds

of the bonds so sold. In other words, we think in such case such commission is an expense 'incident to the issuance' of the bonds, within the meaning of the amended article."

In *The Robin Goodfellow*, 20 Fed. (2d) 924, 1. c. 925, the court defined "incidental" as follows:

"What relation did the act of the lumber company in employing the libelant have to the objects stated in its memorandum of association? Was the employment incidental to the main object of the corporation?"

"'Traffic,' 3 Bouv. Law Dict. p. 3307, says, is 'the passing of goods or commodities from one person to another for an equivalent in goods or money; and a trafficker is one who traffics or a trader, a merchant. Senior v. Ratterman, 44 Ohio St. 673, 11 N. E. 321.' Traffic may be 'either state or interstate \* \* \* according to its origin or destination'; if shipped by the consignor from one state or country to another, 'it is interstate traffic. *Fort Worth & D. C. Ry. Co. v. Whitehead*, 6 Tex. Civ. App. 595, 26 S. W. 172, 173.' 8 Words and Phrases, First Series, p. 7055.

"'Incidental,' obviously, means depending upon or appertaining to something else as primary. 'Burrill's Law Dictionary defines 'incident' as 'belonging or appertaining to; following; depending upon another thing as more worthy. \* \* \* A thing may be necessarily or inseparably incident to another, or usually so.' Webster defines it thus: 'Something necessarily appertaining to or depending on another, which is termed the principal.' *Thomas v. Harmon*, 46 Hun (N. Y.) 75, 77. 4 Words & Phrases, First Series, p. 3494.

"Lord Dunevin, in *Trustee of Harbor of Dundee v. Nicol*, (1915) H. L. A. C. 550 said: 'Incidental, in my view, means incident to the main purpose of the main business.'

"Delivery of lumber is incidental to sale or traffic, the main object; and delivery may be made in any customary manner. If traffic is interstate, it must be shipped in the usual and customary way. Loading lumber on a truck, a car, or a ship, for delivery in the usual way, is no doubt incidental to the business of trafficking in lumber; and the loading may be by the regular employees of the lumber company or by a special employee."

In view of the foregoing authority in defining the word "incidental," unquestionably it was the intention of the General Assembly, in enacting Section 9475, supra, to permit such expense as supplies, printing questions, purchase of certificates to teach, and other similar expenses, but not such expense as actually grading papers. Such is not an expense incidental to the grading of said papers, but is actually grading same, and therefore the lawmakers never contemplated that the county superintendent of schools should employ assistants for the purpose of grading examination papers. If the General Assembly in enacting this provision had intended the county Superintendent should appoint assistants and pay for their services out of this particular fund, they should have specifically provided for same as they did for the state superintendent of schools in said provision. We think this falls under that well-known canon of statutory construction - "that the expression of one thing is the exclusion of another" - as stated by the court in *State v. Sweaney*, 195 S. W. 714, 1. c. 716:

"Section 10881, in its present form, was enacted in 1909. Laws 1909, p. 819. Prior to that time it had been expressly held by this court that the law providing for division of common school districts did not apply to village school districts. *State ex rel. v. Fry*, 186 Mo. 198, 85 S. W. 328. Such

being the case, the Legislature, when it enacted section 10881, knew that the provisions of section 10837, relating to the division of one common school district into two new districts, would not apply to town or consolidated districts, unless it so provided in the act; and knowing this to be true, and failing to so provide, it would be but to do violence to the plain language used to hold that it expressed an intention to apply provisions other than those expressly mentioned. To so hold would be to violate the well-known canon of statutory construction, viz., that the expression of one thing is the exclusion of another."

Under Section 9467, R. S. Mo. 1929, the county Superintendent of schools is entitled to certain expenses for clerical hire out of the county treasury.

The fact that there may be unexpended money in this fund is no reason that the county superintendent of schools is entitled to same when from all indications and by all inferences he can be considered no more than a custodian or trustee of this fund to disburse same as provided by statute. Had the Legislature in enacting said provision intended that he should retain any balance in said fund after all expenses for which the fund was created had been made, the Legislature could have, without any difficulty, in clear and unambiguous language so provided the county superintendent of schools should benefit personally by retaining any such unexpended balance. As previously stated, for an official to receive any compensation, there must be a specific provision allowing same. Because there is a balance in this fund, after accounting for all expenses, is no reason why the county superintendent of schools, by reason of the fact these fees were paid to him, should dissipate same in any manner.

The fact there is no specific provision requiring this balance in said fund to be turned over to the county or state treasurer, as is required of all state officials, commissions, bureaus and boards (p. 415, Laws of Mo. 1933), does

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not imply that the county superintendent of schools shall confiscate same. The General Assembly did not see fit to grant the State Superintendent of Schools, under Section 9475, supra, any unexpended balance in the fund he held, but specifically required that he return same to the General Revenue. We think the reason for not requiring same of the county superintendent of schools was to create a permanent fund. There is no valid reason that we can find why this unexpended balance should not be considered as an accumulated fund and if same should become so large that it is quite evident it will never be needed for the purposes set out in Section 9475, supra, then the General Assembly can appropriate same for some other purpose or they may enlarge on the purpose of the fund.

Therefore, it is the opinion of this Department that under Section 9475, Revised Statutes of Missouri, 1929, thirty per cent. of said fund shall be set aside for expenses of teachers associations and teachers' meetings, but that more than this amount may be spent for this purpose if necessary; that the county superintendent of schools under this provision is not entitled to any part of this fund for the purpose of grading papers, but only for such expenses that are incident to the grading of papers and issuing certificates to teach, which might include supplies, printing questions, purchase of and printing certificates. Furthermore, the county superintendent of schools should make a complete record to the county court in February of each year, showing all fees collected, all disbursements and all money remitted to the State Superintendent of Schools. The county superintendent of schools is not entitled to any unexpended balance remaining in said fund after all expenses have been met; said balance shall remain in said fund. The county superintendent of schools is merely acting in the capacity of trustee of an accumulative fund which shall be used only for the purposes set out in section 9475, supra.

Yours very truly,

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Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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