

CITIES:

City council cannot lend surplus funds to school districts.

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December 19, 1940

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Mr. J. L. Prater  
City Clerk  
Calhoun, Missouri

Dear Sir:

We are in receipt of your letter of December 14, 1940, wherein you ask for an opinion upon the following statement of facts:

"Our town is building a gymnasium and auditorium with W.P.A project, and the sponsors do not have enough money to put in a water system, showers and toilets. While our town has enough money in the treasury to buy the material.

"Now we want to know if there is any legal way that the city council can loan the school board the money?

"The school district is bonded to the limit now and the town does not owe any money at all and have enough revenue coming in to meet the current expenses. Please let me have a ruling on this at once."

We presume for the purpose of this opinion that Calhoun, Missouri, is a village or possibly a city of the fourth class; which ever one it is makes no difference as will be seen from the reading of this opinion.

It will be noted from reading the statutes that there does not appear a section which gives the city council the authority to loan its money to a school district. On the other hand, a school district can only

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borrow money through its compliance with Sections 9225 and 9226, R. S. Missouri 1929, and Section 12, Article X of the Constitution of Missouri, as will be seen from a reading of the case of Strickler et al. v. Consolidated School Dist. No. 1 of Knox County, 291 S. W. 136, 1. c. 138, where the court said:

"Appellants insist that, if they cannot have a judgment for a money recovery, they ought at least to have a decree vesting them the title to the heating plant and the second story of the building, both of which were paid for with their funds, this on the equitable principle that one should not be permitted to be enriched at the expense of another. \* \* \* \* \*

In taking their own funds and building the second story of the schoolhouse and installing a heating plant therein, if such they did, appellants were volunteers pure and simple, and it is well settled that a court of equity will not aid a mere volunteer. \* \* \* \* \*

CONCLUSION

Therefore, in conclusion, it is our opinion that the town of Calhoun could not loan the money or neither could the school district borrow the same and create a legal liability on the district to repay said money.

Respectfully submitted

APPROVED:

B. RICHARDS CREECH  
Assistant Attorney General

COVELL R. HEWITT  
(Acting) Attorney General

BRC:DA