

SCHOOLS:

The Board of directors of a common school district can legally bind their successors on warrants drawn on the proper funds provided said warrants are valid and legal.

January 19, 1942

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Mr. Lieu. Cunningham, Jr.
Prosecuting Attorney
Camden County
Camdenton, Missouri



Dear Sir:

This Department is in receipt of your letter of January 7, 1942, wherein you request an opinion based upon the following facts:

"The Treasurer of Camden County, has requested that I obtain an opinion from you concerning the stopping of payment of a School District warrant by the Board of Directors of the District, elected subsequent to the issuance of the warrant.

"The Board of Directors of Camden County Common School District No. 7, issued a warrant drawn upon the Treasurer of Camden County, payable to the Stoutland Consolidated School District in the amount of \$344.00, as payment for transportation for the students of School District No. 7, to the Stoutland Consolidated School.

"The warrant bears the signature of the President of the Board and the Clerk of the Board, and was dated March 1st, 1940. The warrant was not presented for payment for more than a month, and during that time the annual school election was held, and two new members of the board were elected, who, due to the animosity to the preceding

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members of the board, passed a resolution on the 4th day of April, 1940, directing the Treasurer of Camden County, not to pay out any money on said warrant. A certified copy of which said resolution was duly presented to the Treasurer of Camden County, and she in turn, marked the warrant payment stopped, and refused, when it was presented to her for payment.

"The warrant was drawn at a regular meeting of the School Board, and is payment for a legitimate debt of the District, and the Stoutland School District are threatening to institute mandamus proceedings against the Treasurer of the County, to force her to pay the warrant.

"I enclose a copy of the warrant and a copy of the resolution for your consideration.

"I would appreciate your opinion as to the authority of the succeeding school board to stop the payment on the warrant in question, and as to what the Treasurer should or should not do in regard to paying the warrant upon its presentation."

As stated in your letter, the matter appears to be a controversy between members of the new board and members of the prior board of the school district.

Under Section 10366, R. S. Missouri, 1939, the manner of paying out school monies and the form of warrants to be issued are set forth. The warrant in question refers, as stated in your letter, to payment of transportation. The section in question states as follows, "Money apportioned for transportation of pupils shall be credited to the incidental fund."

The authority of a school board district to bind a succeeding school board district has been recognized in the decision of *Tate v. School District*, 324 Mo. 477, 23 S. W. (2d) 1013. The question of a county court binding its successors by its actions on a contract in the future and for a reasonable length of time, is considered in the decision of *Aslin v. Stoddard County*, 341 Mo. 138. We herewith quote extensively from the *Aslin* Case as it contains all of the authorities and a digest of the *Tate* Case, above referred to. The court, in citing the *Tate* Case and other authorities, said at l. c. 143, as follows:

"No case from this State is cited nor have we found any directly adjudicating the precise question now under consideration, viz., whether the county court may lawfully make a contract, binding upon the county (assuming good faith in the making thereof and reasonableness as to time of performance), the performance of which will extend beyond the terms of office of part or all of the members of the court as then constituted. Appellant cites, on this point, 15 C. J., p. 541, par. 234, and *Tate v. School District*, 324 Mo. 477, 23 S. W. (2d) 1013. The *Tate* case is cited chiefly on the proposition that the contract must be for a reasonable time and free from bad faith or collusion, etc. (a point to be discussed in our next paragraph). Respondent also cites the *Tate* case.

"In said *Tate* case the plaintiff, a qualified school teacher, was employed by the school board, composed of three members, by contract dated December 18, 1924, to teach for a term of eight months, beginning August 3, 1925. There was to be, by law, an annual school meeting in April, 1925, at which time the term of one of the directors, Cottrill, president of the board, would and did expire, he being suc-

ceeded by another. (Incidentally, we may state, it appears that Cottrill's vote was necessary to the employment of the plaintiff). After the April, 1925, school meeting the 'new board,' composed of two of the former members and Cottrill's successor, after re-organizing as provided by statute, refused to recognize the contract with the plaintiff. She sued and recovered, the judgment being affirmed here. A number of questions are discussed in the opinion. Pertinent to the question now under consideration the court said, 324 Mo. 1. c. 492, 23 S. W. (2d) 1. c. 1020, (2):

"The foregoing statutes reflect the clear and unmistakable intention of the General Assembly . . . that the government and control of each of the common-school districts in the State shall be vested in a board of directors composed of three members, whose terms of office shall not expire concurrently, but that the term of office of only one of the three members composing said board shall expire during each school year, thereby reflecting the intention of the General Assembly that such governing board of directors of a common-school district shall be a continuous body, or entity, of which a majority of the members composing the board shall continue in office during the next succeeding school year. While provision is made in the statutes for a change in the personnel of the membership of the board of directors by the vote of the qualified electors of the school district at each annual meeting of the school district, yet the intention of the Legislature is clearly reflected in the statutes that the board of directors of a common school district is a continuous body or entity, and that transactions had, and contracts made,

with the board are the transactions and contracts of the board, as a continuous legal entity, and not of its individual members.'

"In said Tate case a number of authorities are reviewed, in which it is held that contracts of the nature of that there in question are binding upon the school district, though the term of office of some members of the board making them have expired, if the contracts were for a reasonable time and not otherwise repugnant to public policy. The opinion says that such is the prevailing rule, citing and quoting from 35 Cyc. 1079, 1080, and 24 Ruling Case Laws 579, and citing numerous decisions following that rule. The court held that the contract was not void for want of power or authority in the then board of directors to make in on December 18, 1924.

"The text of Corpus Juris cited by appellant reads:

"Although it has been held in some cases that the contract of a county board may be valid and binding, even though performance of some part may be impossible until after the expiration of the term of the majority of the board as it then existed, yet the general rule is that contracts extending beyond the term of the existing board and the employment of agents or servants of the county for such a period thus tying the hands of the succeeding board and depriving the latter of their proper powers, are void as contrary to public policy, at least in the absence of a showing of necessity of good faith and public interest.'

"We have examined the cases cited in the footnotes in support of said text. In our opinion most of them are distinguishable, either in their facts or because of statutory provisions, from the case before us.

"In *Manley v. Scott*, supra, the Minnesota Supreme Court had before it a question similar to that we are now considering. On December 31, 1908, the board of county commissioners appointed and by written contract employed one Schaffer as morgue keeper for the year 1909. The terms of two of the five members of the board expired at midnight that night, two new commissioners having been elected at the preceding November election. When the two new commissioners took office, soon after January 1, 1909, the board elected a new chairman and vice chairman, as required by statute, and attempted to rescind the contract with Schaffer and make a new contract with one Manley as morgue keeper for the year 1909. The court held the board of county commissioners had power to make the contract with Schaffer when it was made and, 'Having the power at that time to employ a morgue keeper, there is no implied limitation upon that power which restricts the possible term of employment to the time when any member or members of the board shall go out of office;' and that, the contract with Schaffer being fair and reasonable and there being no question of fraud or collusion, said contract was binding and the board, after the qualification of the new members had no power to rescind it without cause being shown. Speaking of the question of power of the board of county commissioners to 'make a contract with an employee which extends beyond the expiration of the terms of office of certain members of

the board,' the court said, 29 L. R. A. (N. S.) l. c. 655: 'While there is some apparent conflict in the authorities, it is reasonably clear that the weight of authority is to the effect that the board has such power,' citing numerous cases. The court further said (29 L. R. A. (N. S.) l. c. 659), quoting approvingly from Pulaski County v. Shields, 130 Ind. 6, 29 N. E. 385:

"It (the board) is a continuous body. While the personnel of its membership changes, the corporation continues unchanged. It has power to contract. Its contracts are the contracts of the board, and not of its members. An essential characteristic of a valid contract is that it is mutually binding upon the parties to it. A contract by a board of commissioners, the duration of which extends beyond the term of service of its then members, is not, therefore, invalid for that reason.'

"In said case of Manley v. Scott the court mentioned, as apparently announcing a 'somewhat different conclusion' from that which it said was supported by the weight of authority, practically all of the cases cited in the footnotes in 15 Corpus Juris, supra, and proceeded to discuss and distinguish those cases. (See, also, notes to Manley v. Scott, 29 L. R. A. (N. S.) 652.)

"We regard said case of Manley v. Scott as in point and as being soundly reasoned. The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be con-

ceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent and economical management of its affairs. * * * * *

We are of the opinion that the former members of the board of directors of Camden County Common School District No. 7 can legally bind the succeeding members in the payment of the tuition in question, under the authorities cited, supra.

The question of the legality of the warrant becomes a question of fact and the copy of the same, on its face, appears to be legal. The copy of the resolution instructing the treasurer not to pay the warrant merely states that two members of the board unlawfully and wrongfully issued and signed the warrant on the school district in the sum of Three Hundred Forty Four (\$344.00) Dollars, payable to Stoutland Consolidated School District. The resolution further states that the members were without authority to issue the warrant, and that the same was without consideration and against public policy and issued in violation of the laws of the State.

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As above stated, the question of the warrant and the consideration for the same is a question of fact, which this Department can not pass upon. However, assuming that the warrant is valid in every respect, we know of no liability which the treasurer would incur in honoring and paying the warrant.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

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