

SCHOOLS: Under Section 10501, R. S. Mo. 1939, as amended Laws of Mo. 1941, "copy" of treasurer's statement does not mean "certified copy" or "proof of publication."

July 22, 1942.

7-23



Honorable Lloyd W. King
State Superintendent of Schools
Jefferson City, Missouri

Dear Mr. King:

The Attorney-General wishes to acknowledge receipt of your letter of July 18, 1942, requesting an opinion from this department. The letter requesting such opinion, after omitting the caption and signature, is as follows:

"Inquiry has come to this Department about the requirements of the law governing the making and publishing of a financial report by the board of education as required in Section 10501, as amended in House Bill No. 146, Laws of 1941, page 536.

"Section 10501, as amended, requires the board of education to make and publish, annually, on or before the 15th day of July in each year, a financial statement. The law further provides that a copy of the board's financial report shall be sent by the secretary to the State Superintendent of Public Schools before the district can qualify for the state apportionment of public school funds.

"In a previous inquiry, I submitted to you a general financial statement form to be used by the secretary of the board in making the required financial report to this Department. In submitting this form, I asked if it was complete enough to comply with the provisions of Section 10501, as amended in House Bill No. 146, Laws of 1941, page 536. Also,

I asked if this law gave the State Superintendent authority to determine, within the general provisions of the law, the form and extent of the financial report required of the board.

"In your official opinion of March 24, 1942, you advised that the form submitted by this Department is complete enough to comply with the provisions of the law, and that the State Superintendent of Schools has authority to prescribe the form upon which the report shall be made to his office.

"Boards of education have asked whether or not it is mandatory, under this act, for them to submit as proof of publication a certified copy as reported and published in the district, and whether or not the State Superintendent of Schools has the authority, under this act, to require such proof of publication.

"Question:

- "1. Does the State Superintendent of Schools have specific authority, under the provisions of this act, to require the board of education to submit to this Department a copy of the certified proof of publication before the district can qualify for the state public school fund apportionment?
- "2. If the State Superintendent of Schools does not have authority to require proof of publication of the financial statement, on whom rests the responsibility for enforcing the law which requires its publication?

"I shall appreciate your advice and official opinion."

As to your first question, I will cite Section 10501 of the Revised Statutes of Missouri for 1939, and as amended by the Laws of Missouri, 1941, page 536, which section provides as follows:

"No member of any public school board of a city, town or village in this state having less than twenty-five thousand inhabitants shall hold any office or employment of profit from said board while a member thereof except the secretary and treasurer, who may receive reasonable compensation for their services; Provided, the compensation of the secretary shall not exceed one hundred and fifty dollars, and that of the treasurer shall not exceed fifty dollars for any one year; and provided further, that it shall be the duty of each of said boards, and of the boards of directors in other school districts in this state having six directors or having high schools, to make and publish, annually, on or before the 15th day of July in each year, in some newspaper published in such school district, and if there be no newspaper published therein, then by written statements posted in five public places in such district, a detailed statement of all receipts of school moneys, when and from what source derived, and all expenditures, and on what account; also, the present indebtedness of the district and its nature, and the rate of taxation for all purposes for the year, which said statement, so required to be made and published, shall be duly attested by the president and secretary of the board, and the secretary shall forward a copy of said report to the state superintendent of public schools at Jefferson City. The state superintendent of schools shall not release the state aid apportioned to such a district for the next ensuing school year until a copy of the required report has been received at his office in Jefferson City and has been

approved by him, and any board of education or board of directors who shall fail, refuse or neglect to order such statement to be made, and any officer of said board who shall fail, refuse or neglect to prepare such statement and publish and forward the same, as required by the foregoing provisions of this section, when ordered by such board, shall be guilty of a misdemeanor and punished by a fine not to exceed one hundred dollars."

As can be seen from the above statute, this law provides that a detailed statement of all receipts and of school moneys, when and from what source derived, and all expenditures, the present indebtedness of the school district and the rate of taxation for all purposes for the year, shall be duly attested by the president and the secretary of the school board and published, and the secretary shall forward a copy of said report to the State Superintendent of Public Schools at Jefferson City, Missouri. Unless a copy of such report, duly attested by the president and secretary of the board, is received by the State Superintendent of Schools, the latter shall not release the State aid apportioned to such district until such copy is furnished him. It will be noted that the statute does not speak of a "certified copy" of such statement or of a "proof of publication" of such statement, but only provides that a "copy" of such statement, which was made and published according to the above statute, shall be furnished the Education Department. The only requirement is that such copy be attested by the president and secretary of the board.

Upon receipt of a copy, attested in the proper manner, from any of the school boards, the State Superintendent of Schools can presume that the officers of such boards have performed their duties as required by Section 10501, R. S. Mo. 1939, as amended, and therefore presume that this statement, a copy of which has been sent to him, has been published pursuant to the statute mentioned above. In general, it is presumed that an officer does his duty and that his proceedings are legal and regular. See State ex rel. Ball v. The Board of Health, 26 S. W. (2d) 772, 325 Mo. 41; Waterman v. Chicago Bridge and Iron Works, 41 S. W. (2d) 575, 328 Mo. 688; Gilbert v. Malan, 100 S. W. (2d) 606, 231 Mo. App. 469.

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Following this line of decisions the State Superintendent of Schools, upon receipt of a purported copy of the treasurer's report properly attested, has the power to then apportion the State Aid to which the school board in question is entitled. This department does not feel that the Legislature intended to say that a "certified copy" or a "proof of publication" should be furnished the State Superintendent of Schools. The only term used is "copy" and we feel that that was the intention of the Legislature in view of the authorities we have cited above.

As to your second question, if any officer of the school board shall fail, refuse or neglect to prepare a statement of this kind after having been ordered to do so by the board, such officer or officers shall be deemed guilty of a misdemeanor and punished by a fine not to exceed One Hundred Dollars as provided in the section set out above. In view of the fact that this constitutes a criminal offense, the responsibility for enforcement of the law rests on the law-enforcement authorities in the county in which the school district is located. It can be seen from reading the above statute that an officer of a school board is guilty of no offense unless he refuses to prepare and publish such statement after having been ordered so to do by the school board.

Conclusion

Therefore, it is the opinion of this Department that the statutes do not contemplate the furnishing of a certified copy or proof of publication of the statement required to be made under Section 10501, R. S. Mo. 1939, as amended by the Laws of Missouri, 1941, but that only a copy of such statement, attested to by the president and secretary of the school board, is necessary. It is further the opinion of this department that the enforcement of the above section with regard to publication of a statement as required under Section 10501, R. S. Mo. 1939, as amended by the Laws of Missouri, 1941, is in the hands of the law-enforcing authorities of the county wherein the school board is located.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

HARRY H. KAY
(Acting) Attorney-General

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