

SCHOOLS: A School Board, having option for apportionment of school aid under either of two statutes, required to continue under statute selected under the option plan.

August 10, 1943

Honorable Roy Scantlin,
State Superintendent of Schools
Jefferson City, Missouri



Dear Mr. Scantlin:

This will acknowledge receipt of your letter of recent date in which you request an opinion based on the following facts:

"Since the consolidated districts can only elect to receive aid under the provisions of Section 10454 or Section 10500 until such time as all additional apportionments provided in Section 10454 are paid in full, and that last year such additional apportionments were paid in full, would consolidated districts be automatically cut off from the consolidated aid apportionment as provided in Section 10500, R. S., 1939, and be required to receive their apportionment under the general apportionment laws as provided in Section 10454?"

Looking to Section 10454 and particularly to that portion useful to our purpose, we find the following language:

"* * * Provided, that until such time as the above mentioned additional apportionments are paid in full, any consolidated district now in existence and operating under the provisions of section 10500 Revised Statutes 1939, may elect to receive

state aid under the provisions of this law or under the provisions of said section 10500; but if said consolidated district elects to receive aid under the provisions of said section 10500, said district shall thereby waive all claim to priority of payment as provided in said section. (Amended, Laws 1941, p. 55Q)"

School boards of consolidated school districts, in making application for the apportionment of state school money, may exercise an option, either to make application under the statute quoted above or Section 10500 which reads as follows:

"Whenever any consolidated school district votes one hundred cents on the one hundred dollars assessed valuation for teachers and incidental purposes and the proceeds of said tax, together with the estimated amount from county, township, and state funds and cash on hand amount to less than fifty dollars per pupil in average daily attendance during the preceding year for teachers and incidental expenses, the state superintendent of schools shall each year apportion to each such district a sum sufficient to enable said district to expend fifty dollars (\$50.00) per year per child in average daily attendance: Provided, that when any consolidated school district votes sixty-five cents on the one hundred dollars assessed valuation for teachers and incidental purposes and the proceeds of said tax together with the estimated income from county, township and state fund and cash on hand amounts to less than forty dollars per pupil in average daily attendance during the preceding year for teachers and incidental expenses, the state superintendent of schools shall each year apportion to each such district a sum sufficient to enable said district to expend forty dollars (\$40.00) per year

per child in average daily attendance: Provided, the district maintains an approved high school of at least the third class and gives an approved course of at least one year in agriculture. The form of requisition for such state aid to be determined by the state superintendent of public schools. The incidental expenses referred to in this section shall include only the general incidental expenses of the district. Aid will not be granted for extensive repair work or for the remodeling of buildings. (R.S. 1929, Sec. 9358. Re-enacted, Laws 1939, p. 711.)"

Before proceeding with an interpretation of the two basis of legislation under consideration, the history of the two statutes may be examined to determine the legislative intent.

Section 10500 we find in the Laws of 1913 at page 724. This section was repealed and a new section created in 1917 at page 496 of the Session Acts. Later, this section became Section 11264 in the revision of 1919. A later revision of 1929 shows this section as 9358 and under the latest revision of 1939 it appears as the present section, 10500. The section has been consistently the same during this entire period and we find that in the revision of our school laws in 1931, at page 334 and paragraph 13, a new section which under the 1939 revision became Section 10454. This would allow school boards an option in making their application for an apportionment of state school money at the time the State Superintendent of Schools made the annual apportionment.

These statutes are unambiguous, needing no construction nor interpretation. It is obvious that the Legislature intended to allow school boards of the consolidated districts some latitude in operational plans, and in order so to do, provided for an alternative decision as between these statutes which we have under consideration.

The problem in this instant case now resolves itself into this question. Should a school board, having exercised an option, be allowed to change operational plans and exercise

their option at their own pleasure and convenience?

The school board is a body created by the Legislature and has under its direction a political subdivision of the State. Because of its legislative creation, it can exercise only those powers and functions expressly given by the Legislature. Under the two statutes which we have open for discussion, we find that in qualifying for state aid, the statute has expressly declared, in the alternative, two plans for the operation of the school district. In qualifying for this state aid and in exercising the option allowed them, these things must necessarily transpire.

(1). A determination by the Board as to the operational statute under which they wish to conduct the affairs of that particular district.

(2). Proper application submitted to the State Superintendent of Schools stating their operation statute number.

(3). The approval and the exercise of said discretion on the part of the State Superintendent of Schools.

We believe all of these elements are necessary to qualify under either of the statutes. A school board, having qualified and signified that section under which they propose to operate, in the opinion of the writer, must necessarily confine its decision once having arrived at a determined operational plan.

We believe it would be consistent good policy to insist that the boards rigidly adhere to a policy, once having been selected. In effect this board is in the same situation as a county court, for example, in the preparation of a budget. This plan corresponds to the budget plan of the court, and we should require a school board to refrain from a shifting from one plan to the other. As we view the situation, the school board, consisting of a group of individuals and having little or no discretion of the conduct of the affairs of their district, shall not be allowed to vacillate between the plan which appears to be productive of the greatest amount of revenue at that particular moment. Should the matter be left

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to the discretion and judgment of a single individual, such as the Superintendent of Schools, he should be inclined to favor a more liberal interpretation of the situation.

CONCLUSION

We therefore conclude, from the above and foregoing, that a school board, once having received their apportionment under the general apportionment laws as provided in Section 10454, would be required to operate under the same general plan, once having exercised the option provided for in this section. The same would be true should the board adopt the provisions of Section 10500. In that event, they would be required to receive their apportionment under this latter section to the exclusion of all others.

Since the additional apportionment was paid as received by the State Superintendent of Schools under the situation outlined in your question, the Consolidated District no longer has an option in such matter and would be required to receive their apportionment under the general statutes, that is, Section 10454, R. S. Mo. 1939, because of this statement, which is the last paragraph of the last mentioned section:

"* * * Provided, that until such time as the above mentioned additional apportionments are paid in full, any consolidated district now in existence and operating under the provisions of section 10500 Revised Statutes 1939, may elect to receive state aid under the provisions of this law or under the provisions of said section 10500; but if said consolidated district elects to receive aid under the provisions of said section 10500, said district shall thereby waive all claim to priority of payment as provided in said section. (Amended, Laws 1941, p. 550.)"

Respectfully submitted,

L. I. MORRIS
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APPROVED:

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