

SCHOOLS : Directors of Consolidated Schools
DIRECTORS : may not invest surplus building
: funds in United States Bonds.

February 16, 1944



Honorable Edward Cusick
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Mr. Cusick:

This will acknowledge the receipt of your letter of February 8, 1944, in which you request an opinion from this office. Your letter, omitting caption and signature, reads as follows:

"I have been requested by the Board of Education of Consolidated School District No. 1, Pulaski County, Missouri to obtain an opinion from you on the following subject:

"the above school district is in the South part of Pulaski County, the South line of the district being the line between Pulaski and Texas Counties. The territory comprising it was organized into a Consolidated School District about 1914 and has functioned as such since, first maintaining a second class High School and then for the past several years a first class High School up to the coming of Fort Leonard Wood.

"When this Fort was laid out and established in this County, practically all of the land area of the district was taken in the Fort Reservation and the lands of course acquired by the Government, except a narrow strip on the South part of the district and a still smaller part on the West side, and in all of the lands left in the district perhaps less than a dozen families living.

"All of the district property was taken by the Government in condemnation. This included a central school plant at Bloodland, Missouri on a five acre tract belonging to the district, and two other school buildings in other parts of the district, each being on a small tract

of about an acre of land. This leaves the district without buildings or property of any kind. The children in the district are being transported to another school District, which is in Texas County.

"It is contemplated at sometime for the remaining part of this district to join another, if that can be worked out, and to take its funds on hand and assist in building when prices will justify a building program.

"The district received the sum of \$28,000.00 plus about \$1,700.00 interest in the condemnation proceedings, which have been concluded, for all of its land, buildings and other property. Out of this sum, the district paid all of its bonded debt and all other accounts and obligations of all kind, leaving the district without about \$15.00 in cash. This fund has been ear-marked a building fund, because it was derived from the proceeds paid by the Government for the district's buildings, land and property.

"This district keeps and maintains its organization and functions with a Board of Education of six members. The board is unanimous in the view that this fund should be invested in bonds of the U. S. in order to bring in some interest and be safely invested until such time as this fund (approximately \$15,000.00) is needed for building purposes.

"Question-- Can the district legally invest such funds in bonds of the United States?

"Your early opinion will be appreciated, so if the investment can be made, it can be done while the present bond drive is on.

"P.S. As you know, a district of this kind has its own Treasurer and keeps its funds."

The establishment and management of Public Schools in the state and in the various districts of the state is vested in a Board of Directors. A statement of the qualifications and the provision for the tenure of office of members of a Board of Directors of a consolidated district may be found at Section 10469, R. S. Mo., 1939. It is unnecessary in this instance to do more than cite the statute. The organization of the Board and duties of various officers is outlined at Sec. 10470 R. S. Mo., 1939. The duties of this board naturally fall into two classes, i.e., mandatory duties and discretionary duties. Our courts have held that the purely discretionary duties of a board may not be controlled by mandamus.

See

State ex rel v. Jones, 155 Mo. 570, 56 S. W. 307
Velton v. District, 222 Mo. App. 997, 6 S.W.(2d) 652
Gladney V. Gibson, 208 Mo. App.70, 233 S. W. 271

A board of directors of a consolidated school is a creature of the statutes. It may perform any and all authority allowed by statute. The board must find its authority in the statutory enactments in order for their acts to be valid. Unless they can show this statutory authority, they may not act.

The provisions for the creation, operation, management and scope of authority for consolidated schools may be found at Sections 10494, 10496, 10497 and 10498. There may be other sections which might apply but these just cited will be found sufficient to show the authority for the District's formation and subsequent functioning under legislative enactment.

With respect to the acquisition of school sites, the erection of buildings and other matters involving real estate owned by the District, the relation of certain pronouncements and decisions of our courts would seem appropriate at this point. Our courts have held that Board of Consolidated District had power to

select new school site without vote of the taxpayers.

Crow v. District, 36 S. W. (2d) 676
State ex rel District 224 App. 120, 21 S.W.(2d) 645

The board of a city, town or consolidated district, has power to locate and authorize the purchase of sites for school houses without vote of tax payers.

Gladney v. Gibson, 208 App.70, 233 S.W. 271
State ex rel Gehrig v. Medling, 29 S. W. (2d) 1040

Having discovered that a board of a consolidated district may acquire a site and construct a building, we turn to some expression of authority which would enable them to consolidate in the first instance and operate as a consolidated district. For this authority we refer to Sections 10487, 10493, 10494 and 10495. In the event a school is closed and a board has such authority so to do, the matter of transporting the pupils of the closed school and the procedure required for voting on such a question is to be found at Section 10496, R. S. Mo., 1939.

Title to the property of the district is held by the board. See section 10403, R. S. Mo., 1939, which reads:

"The title of all school house sites and other school property shall be vested in the district in which the same may be located; and all property leased or rented for school purposes shall be wholly under the control of the board of directors during such time; but no board shall lease or rent any building for school purposes while the district school house is unoccupied, and no school house or school site shall be abandoned or sold until another site and house are provided for such school district. "

In construing this section our courts, in a leading decision have held:

"In Missouri, the property of school districts acquired from public funds is the property of the state, not the private property of the school district in which it may be located, and the school district is a statutory trustee for the discharge of a government function

entrusted to the state by our Constitution."

District of Oakland v. District of Joplin,
102 S.W. (2d) 909.

Those sections of the statute devoted to surplus funds of a district are found to read as follows:

Sec. 10434. Loan of surplus district school money.--

"Whenever it shall be found that any school district has any surplus funds in the county treasury, the directors of such school district may make application, in writing, to the county court, setting forth that school funds are accumulating beyond the wants or necessities of such district. Upon such application, it shall be the duty of the county court to cause such funds to be loaned for the use and benefit of such school district."

Sec. 10435. How loaned.

"Such school funds shall be loaned at the same rate of interest and in the same manner as township school funds are loaned; Provided that no school tax shall be levied in such district other than for incidental expenses during the time for which such surplus fund is sought to be loaned; and provided further that a free public school shall be maintained in such school district for at least eight months in each year. "

Those portions of our statute relating to the management of school funds in the state by the County Court have been the subject of recent revision by the 62nd General Assembly. Because of limited space, we cite them for your study and merely comment upon their construction.

See 1943 Laws of Mo., p. 880, for these revisions of sections 10376, 10383, 10384, 10384A, 10385, and 10386.

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The collection, investment and preservation of County School funds is changed considerably under these new sections. The procedure has been made mandatory and little or no discretion is afforded the County Court. Restrictions have been imposed and considerably enlarged, with the idea of preserving and protecting funds of the various districts.

We again repeat the holding of our court, when called upon to consider the power and jurisdiction of a county court. Here is the language of this decision;

"A County Court is a body having limited power and jurisdiction. These powers are defined by statute."

Consolidated Dist. v. Jackson Co. 84 S.W. (2d), 988.

CONCLUSION.

From our reading of the authorities and the statutes involved, it is therefore the opinion of this department that no authority is expressly given the Board of Directors of a consolidated district to invest surplus funds belonging to the school district, as outlined in the present situation, in U. S. Bonds. In this absence of statutory authority the Board may NOT invest surplus funds in United States bonds.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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