

SCHOOLS; (1) Directors of school district cannot donate to the American Red Cross from funds of the "incidental fund"; (2) Directors of such school district cannot invest surplus funds in the "incidental fund" in United States bonds.

January 24, 1944



Honorable Bryan A. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Mr. Williams:

Your opinion request of January 21st has been received by this department. Such request, omitting caption and signature, is as follows:

"An opinion is desired by a number of School Districts with regard to certain disbursements of funds in the Incidental Funds of said districts:

"1. Has a school district by a unanimous vote at an annual meeting authorizing the Board of Directors to contribute to the American Red Cross out of money in the Incidental Fund to so contribute any amount, even though the exact amount to be contributed on was voted on at the annual meeting?

"It was my opinion when asked that the voters could not invest the directors with such power. Several parties agitating that procedure contend that as the taxpayers pay these funds from taxes out of the district; and that the school properties are in a state of good repairs, and they have no need for the money at present or in the near future, they were justified in authorizing the Board of Directors to contribute to the Red Cross. Their further argument is that on account of the tire situation it becomes more difficult to raise their quota. Red Cross funds are usually secured by fixing a quota by school districts in Bollinger County.

"2. In Vol. 111, No. 81, July 7, 1943 under Schools: No. 89-43 you briefly state an opinion with regard to investing surplus money in the incidental and teachers' fund in United States Bonds. The School Districts are desirous of obtaining an opinion as to whether or not the districts can invest surplus money in United States Bonds out of the Incidental Fund alone. Please advise if I am correct in assuming that your opinion is that the Board of Directors cannot invest surplus money out of the Incidental Fund."

We will first take up the question marked number one in the above request. We feel that the issue that you wish settled in this first division of your letter is whether or not money can be paid from the incidental fund of the school district to the American Red Cross in the form of a contribution of such school district.

We wish first to call your attention to Section 10366, R. S. Mo. 1939, which section is very lengthy and we will only quote that part which we think relevant to the question which you have asked, as follows:

"* * * * *

"The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the 'teachers' fund', except money apportioned for free text books, which shall be credited to the 'Free Text Book Fund'. Money derived from taxation for sinking fund shall be credited to the sinking fund. Money apportioned for transportation of pupils shall be credited to the incidental fund, and money derived from taxation for annual interest shall be credited to the 'interest fund', the money derived from taxation for incidental expenses shall be credited to the 'incidental fund'. * * * * *"

It will be seen from the above quotation from Section 10366, aforesaid, that all money which has been apportioned for the transportation of pupils and all moneys derived from taxation for incidental expenses shall be credited to the "incidental fund." We have searched the statutes and decisions of this State and do not find a definition of the term "incidental fund." However, we feel that a fund of this kind should be used for the purposes of taking care of expenses which are incidental to the transaction of the business of the school district and which is not taken care of in other funds. However, we do feel that such fund should be used for the benefit of the school district and unless the expenses to be paid pertain to the business of the school district, this fund should not be used.

To substantiate our stand in this matter we wish to cite you to some definitions of "incidental expenses" which have been made in other states. In *Dunwoody v. United States*, 22 Ct. Cl. 269, 280, a matter of incidental expenses was taken up and the court held that the adjective "incidental," as used in appropriation bills to qualify the word "expenses," has a technical and well-understood meaning. And the court also held that it is usual for Congress to enumerate the principal classes of expenditures which they authorize, such as clerk hire, fuel, light, postage, telegrams, etc., and then to make a small appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen, and which it would be useless to specify more accurately. For such disbursements a round sum is appropriated under the head of "incidental expenses."

Again we find that in *F. C. Austin Mfg. Co. v. Twin Brooks Tp. S. D.*, 91 N. W. 470, 472, the court held the following:

"The meaning of the words 'incidental expenses,' as used in Comp. Laws Dak. Sec. 772, providing that supervisors shall have charge of such affairs of the town as are not by law committed to other officers, and they shall have power to draw orders on the town treasurer for the disbursement of such sums as may be necessary for the defraying of the incidental expenses of the town, cannot be extended so as to include other than the expenses necessarily incident to the ordinary conduct of the town business,

and do not include road machines, the purchase of which was not authorized by the electors."

Therefore, it is the opinion of this department that a school district in this State would be exceeding its authority if it attempted to make contributions to various charities from the incidental fund of such school district. Although such contribution might be considered very laudable, we do not feel that incidental expenses would include such contributions. This fund known as the "incidental fund" is a fund which should be used for the payment of obligations which cannot be paid from other funds.

As to your question number two, we feel that the opinion dated May 4, 1943, written by this department to Mr. D. D. Thomas, Jr., Prosecuting Attorney, at Carrollton, Missouri, answers your question. We are attaching hereto a copy of such opinion. It was the conclusion of this department in that opinion, which was written by Mr. Harry H. Kay, formerly an Assistant Attorney-General, that the board of directors of a school district could not invest surplus money of the incidental and teachers' fund in United States bonds. The "incidental fund" and the "teachers' fund" are separate funds under the statutes of this State, and we are sure that this conclusion meant that money from either of the funds could not be used for the purpose of investing in United States bonds.

Conclusion

Therefore, it is the opinion of this department that the board of directors of a school district would not be authorized to make a donation to the American Red Cross from the "incidental fund" of such school district; and it is further the opinion of this department that the board of directors of such school district could not invest surplus money of the "incidental fund" in United States bonds.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG