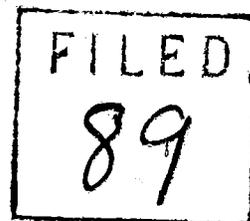


**CONSOLIDATED SCHOOL DISTRICTS:** Funds of such district cannot lawfully be used to purchase a residence for the Superintendent of Schools of such district.

July 11, 1945

Honorable D. D. Thomas, Jr.  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri



Dear Mr. Thomas:

This will acknowledge receipt of your letter of July 2nd, 1945.

Your letter states:

"I have been requested by members of the Board of the Wakenda Consolidated School District of Wakenda, Missouri, to request your opinion on the question of whether or not such District may purchase real estate for the purpose of providing a residence for its superintendent of schools.

"I have given it as my opinion that the Board has no such authority but the Board desires an official statement from your Office."

Section 10487, R. S. Mo. 1939, outlines the procedure for the formation of a consolidated school district. A consolidated school district is one formed from three or more common school districts or a village school district with two or more adjoining districts. Said section is as follows:

"Three or more common school districts, or a village district having less than two hundred children of school age by last enumeration, together with two or more adjoining districts, may be consolidated into a new district for the purpose of maintaining both primary schools and a high school by proceedings had in accordance with the provisions of section 10410. When such new district is formed it shall be known as 'Consolidated district No.

\_\_\_\_\_ of \_\_\_\_\_ county' and shall organize at a special meeting within fifteen days after the formation thereof; such organization and the government of such consolidated district shall be under and in compliance with the laws governing town and city school districts as provided in article 5 of this chapter."

The first paragraph of Section 10474, R. S. Mo. 1939, designating the powers and duties of the board of education of a consolidated school district, is as follows:

"The board of education of any town, city or consolidated school district shall, except as herein provided, perform the same duties and be subject to the same restrictions and liabilities as the boards of other school districts acting under the general school laws of the state: \* \* \* \* \*

Article 2 of Chapter 72, R. S. Mo. 1939, contains the laws of this state applicable to all classes of schools. This article and chapter prescribe the general methods and measures providing for the collection of taxes for school purposes contained in our statutes. Those methods are set out in the following statutes.

Section 10347, R. S. Mo. 1939, provides for the estimate of funds for a school year. Said section is as follows:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, or, when a longer term has been ordered by the annual meeting, for the time thus decided upon, together with such other amount for purchasing site, erecting buildings or meeting bonded indebtedness, and interest on same, as may have been legally ordered in such estimate, stating clearly the amount deemed necessary for each fund, and the rate required to raise said amount."

Following the estimate made by the board of education or board of directors of a school district for its annual school requirements, under Section 10395, R. S. Mo. 1939, the county clerk of the county in which such district is located must assess taxes to be collected to make up such fund. That part of said section requiring the county clerk to so proceed is as follows:

"On receipt of the estimates of the various districts, the county clerk shall proceed to assess the amount so returned on all taxable property, real and personal, in said district, as shown by the last annual assessment for state and county purposes, including all statements of merchants in each district of the amount of goods, wares and merchandise owned by them and taxable for state and county purposes: \* \* \* \* \*

Section 10366, R. S. Mo. 1939, was repealed by the Legislature of 1943 and a new section, numbered 10366, was reenacted, providing for the preservation and distribution of all school moneys, which includes moneys of a consolidated school district such as the Wakenda Consolidated School District of Carroll County, Missouri. Said Section 10366, Laws of 1943, page 893, is as follows:

"All school moneys received by a school district shall be disbursed only for the purposes for which they were levied, collected or received. There is hereby created the following funds for the accounting of all school moneys: Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. School district moneys shall be disbursed only through warrants drawn by order of the board of education. Each warrant shall show the legal identification of the district by name or by number as provided by law; shall specify the amount to be paid; to whom payment is made; from what fund; for what purpose; the date of the board order, and the number of the warrant. Each warrant must be signed by the President and the Secretary or Clerk. No warrant shall be drawn for the payment of any school district

indebtedness unless there is sufficient money in the treasury and in the proper fund for the payment of said indebtedness.

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On page 895, Laws of 1943, as a part of the continuation of said Section 10366, it is provided as follows:

"Money donated to the school district shall be placed to the credit of the fund where it can be expended to meet the purpose for which it was donated and accepted."

It would thus appear from that part of Section 10366 last quoted that if funds were donated for the purchase of real estate for the purpose of providing the superintendent of a consolidated school district with a residence, the board of directors would be authorized to use such donated funds for such purpose. We do not find any statute in this state permitting the board of directors of a consolidated school district, or any other school district, to use the funds of a school district for the purchase of real estate to provide a residence for the superintendent of schools of such district or for any purpose whatsoever other than for the funds as positively directed in said Section 10366, accounting for all school moneys.

Among other precautions taken by the lawmakers of the state for the safety of school funds of a consolidated district we call attention to Section 10503, Article 5, Chapter 72, R. S. Mo. 1939, requiring the selection of a depository for such funds. Said section is as follows:

"The board of education of city, town and consolidated school districts in this state shall select depositories for the funds of such school district in the same manner as is provided by law for the selection of county depositories; and they may loan any moneys held for the payment of outstanding bonds upon the same terms and upon the same conditions as provided by law for loaning county and school moneys."

The statutes of our state and the decisions of our Supreme Court, construing such statutes, hold school funds and all other.

public funds to be trust funds in the hands of public officials having the custody, administration, and distribution of said funds in charge.

The strictness with which public officers having custody of public school funds are held to account is briefly, but well stated, by our Supreme Court in the case of Saline County v. Thorp, 88 S. W. (2d) 183, l. c. 186, where it is said:

"\* \* \* Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. Montgomery County v. Auchley, 103 Mo. 492, 15 S. W. 626."

In the case of Morrow v. Pike Co., 189 Mo. 610, l. c. 622, our Supreme Court, stating that school funds are trust funds, and citing the strictness to which officers are held in handling such funds, said:

"\* \* \* It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund (Ray County to use v. Bentley, 49 Mo., l. c. 242); It may not divert the general county revenue to its protection, and, on the other hand, it cannot apply the school fund to the payment of ordinary county debts. \* \* \*"

The last cited case, Morrow v. Pike Co., cites the case of Ray County v. Bentley, 49 Mo. 236, on the same question, where, l. c. 242, our Supreme Court said:

"\* \* \* The County is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the law-making power for the appropriation and distribution of the fund. In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the per-

formance of a duty specifically de-  
volved upon it by the laws of the State.  
There is nothing judicial in the exer-  
cise of its functions in this respect.  
The County Court does not derive its  
powers from the county, and it can exer-  
cise only such powers as the Legislature  
may choose to invest it with. Whatever  
jurisdiction is conferred upon it is  
wholly statutory. \* \* \* \* \*

The rules of law announced in the cases above cited,  
for the preservation and protection of school funds, apply  
to funds of consolidated school districts.

CONCLUSION

It is, therefore, the opinion of this department that  
the members of the Board of Directors of the Wakenda Consoli-  
dated School District of Wakenda, Missouri, have no authority  
in law so to do, and may not purchase real estate for the  
purpose of providing a residence for its Superintendent of  
Schools.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

GWC:CP