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May 31, 1946

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

Dear Mr. Scantlin:

We hereby acknowledge receipt of your request for an opinion which reads as follows:

"House Bill No. 151 enacted by the 63rd General Assembly and signed by the Governor May 24, 1945, known as the Public School Retirement System of Missouri, is now in full force and effect. Beginning July 1, 1946, boards of education in this state, excepting the three large cities with their own local retirement systems, will be required to make contributions in support of the retirement system.

"Section 3, Part (1), of the Retirement Act provides that contributions shall be made in equal amounts by teacher members of the system and their board of education employers. Part (3) under Section 3 provides that the teacher's contribution shall be made through appropriate deductions from pay checks. Nothing is said in this act to indicate from what source or fund the board of education contribution shall come. The law merely provides that the employer shall contribute an equal amount to that withheld from the teacher's pay check.

"In the application of this law, many boards of education are asking for instruction as to the proper fund from which the employer's

contribution in support of the teacher retirement system shall be paid.

"There seems to be no question about the fund accounting of the teacher's contribution since teachers must be paid from the teachers' fund and their contribution is merely a withholding from the monthly pay checks. The employer's contribution is not in any way made for the payment of the teacher's salary. It is the district's contribution to the State's Public School Retirement System. Since this contribution is a fixed charge and regulated by the general laws of this state, it would appear to be a district expenditure from the incidental or rather general funds of the district. Generally accepted accounting procedures for school systems in the United States classify the school district's contribution for retirement support as a fixed charge. It is not classed as salary of teachers. In the fiscal report of the United States Office of Education, in its publication of financial data from the various states, specific instruction is given for accounting a school district's contribution to the Public School Retirement System as a fixed charge and not to be counted as salary of teachers.

"I find, in examining the laws of this state governing school fund accounting, nothing which would seem to prevent the board of education from counting the district's contribution to the Public School Retirement System a fixed charge and payable from the district's regular incidental fund account.

"Since boards of education are now planning their budgets for the ensuing fiscal year and the first contribution to be made will begin with the first month of the school year, July, 1946, it is necessary for school boards to be instructed promptly in regard

to this matter.

"I shall appreciate your advice and official opinion in regard to the following question:

"Will the board of education, in making its required contribution to the Public School Retirement System of Missouri, in complying with House Bill 151, Laws of the 63rd General Assembly, be making a proper and legal expenditure if payment is made from the school district's incidental funds as established by laws of this state? If not, from what fund would it be proper to make such contribution?"

Section 10366, Laws of Missouri, 1943, page 893, sets out the various funds of the school districts and provides:

"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.

"The warrants drawn shall be in the following forms:

TEACHERS' FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, for teacher's services or tuition in district No. _____, _____ dollars, out of any moneys in your hands belonging to the teachers' fund of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____, Clerk.

INCIDENTAL FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, the sum of _____ dollars, for _____ furnished district No. _____ out of any moneys in your hands belonging to the incidental fund of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____, Clerk.

FREE TEXTBOOK FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, the sum of _____ dollars, for _____ furnished district No. _____ out of any moneys in your hands belonging to the 'Free Textbook Fund' of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____, Clerk.

BUILDING FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, the sum of _____ dollars, for _____ furnished in the repair, furnishing or erection of a schoolhouse in district No. _____, out of any moneys in your hands belonging to the building fund of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____ Clerk.

SINKING FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, the sum of _____ dollars, for the retirement of bonds of district No. _____, out of any moneys in your hands belonging to the sinking fund of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____ Clerk.

INTEREST FUND.

\$ _____ No. _____

Treasurer of _____ County, Missouri:

Pay to _____, or order, the sum of _____ dollars, for interest on the outstanding indebtedness of district No. _____, out of any moneys in your hands belonging to the interest fund of said district.

Done by order of the board, this _____ day of _____, 19____.
_____, President. _____ Clerk.

"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 as hereinafter provided. Money apportioned by the state for transportation and money derived from taxation for incidental expenses shall be credited to the 'Incidental Fund'. Money apportioned for free text books shall be credited to the 'Free Text-book Fund'. All money derived from taxation or received from the state for the erection of school buildings, from sale of school sites, schoolhouse or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the 'Building Fund'. Money derived from taxation for the retirement of bonds shall be credited to the 'Sinking Fund'. Money derived from taxation for the payment of interest on bonded indebtedness shall be credited to the 'Interest Fund.' Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original expenditures were made. 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. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board. No treasurer shall honor any warrant unless it be in the proper form, and each and every warrant shall be paid from its appropriate fund, as provided by law. No partial payment shall be made upon any school warrant, nor shall any interest be paid upon any such warrant: Provided, that tuition shall be paid from

either the Teachers' or Incidental Funds if no part of the minimum guarantee is used for such purposes: Provided further, tuition and transportation costs shall be paid from either the Teachers' or Incidental Funds when the school in any district has been closed on account of temporary combination or low average daily attendance, as provided by law: Provided further that the Board of Directors shall have the power to transfer from the incidental to the building fund such sum as may be necessary for the ordinary repairs of school property: Provided further, that after all incidental obligations are paid, the board of directors shall have the power to transfer such portion of the balance remaining in the Incidental Fund to the Teachers' Fund as may be necessary for the total payment of all contracted obligations to teachers: Provided further that in the event of a balance remaining in the sinking or interest funds, after the total outstanding indebtedness for which said funds were levied is paid, the said board shall have the power to transfer such unexpended balances to the building fund: Provided further, that when any school district has been disincorporated by state or federal agencies, the Treasurer for the school district, when directed by the County Superintendent of Schools, shall use the balances of moneys remaining in any or all funds to pay outstanding obligations of said district and shall transfer the unencumbered balance to the County Interest School Moneys for distribution as provided in Section 10390. No county, township, or school district treasurer shall honor any warrant against any school district that is in excess of the income and revenue of such school district for the school year beginning on the first day of July and ending on the thirtieth day of June following; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such fund in accordance with Section 10454, Revised Statutes, 1939. Reenacted, Laws 1943, p. 893, section 1."

The funds established by this section represent all school moneys and there is no mention of a particular fund from which any contributions should be paid into the Public School Retirement System of Missouri. In the enactment of H. B. 151 we must presume that in the absence of a particular fund for the payment of such contributions, the Legislature intended that they be made from one of the existing funds. To take any other view would render Subsection 1 of Section 3, H. B. 151 ineffective. The case of *Graves v. Little Tarkio Drainage District No. 1*, 134 S. W. (2d) 70 1. c. 78, 345 Mo. 557 states:

"* * it is presumed that the Legislature intended every part and section of such a statute, or law, to have effect and to be operative, and did not intend any part or section of such statute to be without meaning or effect." State ex rel. *Dean v. Daues*, 321 Mo. 1126, 1151, 14 S. W. 2d 990, 1002. * * * * *

We must further presume that the Legislature enacted H. B. 151 with the full knowledge of the division of the school moneys and funds under which they were classified. It is held in the case of *State ex rel. Case v. Wilson*, 132 S. W. 625, 1. c. 627, 151 Mo. App. 723, that:

"* * in the passage of laws, the Legislature is presumed to know the existing state of the laws with which it deals at the time it acts, and is deemed to have dealt with the matter in the light of the state of the laws then existing. (*Sikes v. R. R. Co.*, 127 Mo. App. 326, 105 S. W. 700.)

Therefore, we may look to Section 10366, Laws of 1943, supra, to determine from which fund the contributions of the employer should be paid.

The funds which may be readily disqualified are those which are earmarked for a particular purpose, such as the Free Textbook Fund, the Building Fund, the Sinking Fund and the Interest Fund. This would leave the Teachers' Fund and the Incidental Fund.

Taking up first the Teachers' Fund, we find that by the statute it is to be used for the purpose of paying for teachers' services and tuition. If, therefore, it may be said that the retirement allowance to be received under H. B. 151 is a compensation to

teachers then this fund may be used for the contributions. If on the other hand the retirement allowance is a gratuity, the Teachers' Fund may not be used. In the case of *State ex rel. Heaven v. Ziegenhein*, 45 S. W. 1099, a legislative enactment authorized the payment of one-half of the last year's salary of policemen in the City of St. Louis on a per month pro-rated basis on retirement after twenty years' service. None of the funds for the payment of this pension came out of the salary of the policemen. The Supreme Court of Missouri held that the payments under the pension plan were mere gratuities. In so holding the Court said:

"* * * * We are not unmindful of the important services rendered by the officers of the police force, and of the benefits derived from their faithfulness in protecting and guarding the lives and property of the citizens. They are officers of the state, however, and the constitution has declared that, like all others holding official stations, they must rest content with the remuneration fixed by law; and after their services have been performed, no matter how valuable they may have been, the city cannot, as a gratuity or pension, 'grant public money to or in aid of any individual,' and the courts have not power to require it to be done. * * * "

This case would, therefore, tend to place Missouri in the line of jurisdictions which classify pensions and the like as gratuity and not as compensation. Cases from other jurisdictions which adhere to this rule are as follows: *Bd. of Trustees v. Schupp* (Ky.), 3 S. W. (2d) 606; *People v. Wright* (Ill.), 40 N. E. (2d) 719; *Pennie v. Reis*, 32 U. S. 464; *Jones v. Valentine*, 298 N. Y. Sup. 802; *State v. Rogers*, (Minn.) 91 N. W. 431.

Therefore, since the retirement allowances to be granted under H. B. 151 are not to be classed as compensation in Missouri but rather as gratuities it would be improper to use the Teachers' Fund, which as stated hereinbefore is to be used only for the purpose of compensation for teachers' services and tuition.

The only remaining fund from which the employer's contribution to their retirement system can be made is the Incidental Fund. As the title of this fund denotes, it is to be used for incidental purposes. Unlike the other five funds, the Incidental Fund is not earmarked for a particular purpose. If, therefore, H. B. 151 is to be given effect and operation in accord with the rule of *Graves v. Little Tarkio*

Drainage District, supra, then we must hold that in the absence of the establishment of a particular fund for the payment of employers' contributions to the Public School Retirement System of Missouri, the only fund from which such contributions may be made is the Incidental Fund.

CONCLUSION

It is the opinion of this Department that in the absence of a particular fund for contributions to the Public School Retirement System of Missouri the Board of Education, under Subsection (1) of Section 3, H. B. 151, would be making a proper and legal expenditure if such contributions are made from the school district's Incidental Fund as established by Section 10366, Laws of Missouri, 1943.

Respectfully submitted

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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