

SCHOOLS: In school district lying in two counties
COUNTY TREASURER: school board cannot issue warrant directing
WARRANTS: county treasurer of one county to pay all
district money to treasurer of other county.

April 23, 1951

5-1-51

Honorable Ted A. Bollinger
Prosecuting Attorney
Shelby County
Shelbyville, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads:

"An opinion is requested of your office on the following facts:

"Oak Ridge Common School District is located in two counties - 6 square miles and the school building being in Shelby County and 3 square miles lying in Monroe County. School tax moneys, therefore, go to each county resulting in duplicate bookkeeping for the school board. The board wants authority to lump all their money in one county by issuing a warrant on Monroe County payable to the Treasurer of Shelby County for whatever money belongs to their district. The issue, therefore, is whether or not this procedure is legal and proper."

The school district in question, about which you inquire, is one divided by a county boundary line and, therefore, the territory of the district lies in two separate counties. Consequently, in answering your question we will first undertake to set forth the statutes which have a bearing thereon.

Regarding the matter of levying and collecting school taxes within school districts divided by county lines, Section 165.190, R.S. Mo. 1949, in part, provides:

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"In all school districts divided by county lines it shall be the duty of the clerk of such school district to report to the clerk of each county in which such district is in part located the number of persons of school age residing in that part of said school district lying within the respective counties, together with the amount of money necessary to maintain the school, and such other funds as it is necessary to raise by taxation in the same manner as is provided in districts not so divided. And it shall be the duty of the county court and county clerk of each county in which such district is located to apportion to said district such part of the public school funds as the enumeration of such parts of said district shows it to be entitled to, and all moneys collected for school purposes as taxes on property within such district shall be paid to said district the same as if it lay entirely within one county."

In reading the above statute it appears that the clerk of such school district is required to submit reports to the clerk of each county in which the district lies, wherein certain information is given relative to the maintenance of the school within said district, including the amount of money necessary to maintain said school and which may be necessary to raise by taxation. Thereafter, the school moneys received by apportionment or by taxation are paid to the school district within each county in which said school district is located the same as if the district lay entirely within one county.

Also pertaining to school moneys received by a school district, including tax moneys, and relating to the manner in which said school moneys are handled and paid out, Section 165.110, R.S. No. 1949, in part, 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 are 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

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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 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 herein 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 textbooks shall be credited to the free textbook 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

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according to the tax levies made for the years in which the obligations were incurred. * * *

"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. * * *"

According to the procedure set out in the above-quoted statute all school moneys received, be they in the form of taxes or otherwise, are paid to the county treasurer in which said district lies. Said school moneys so received are contained in some six separate funds which are created by the statute, and the county treasurer is required to open an account for each fund.

From the above section it appears that the school moneys received by the county treasurer, and credited to each of the six separate funds, can only be disbursed or paid out upon properly executed warrants directing said treasurer to pay money from a particular fund. Further in this connection, Section 165.230, R.S. Mo. 1949, in part, provides:

"Upon the order of the board of directors, it shall be the duty of the district clerk to draw warrants on the county treasurer in favor of any party to whom the district has become legally indebted, either for services as teacher, for material purchased for the use of the school or material or labor in the erection of a schoolhouse for said district - the said warrant to be paid out of any moneys in the appropriate funds in the hands of the said treasurer and belonging to the district. The species of indebtedness must be clearly stated and should be drawn on its appropriate funds; * * *"

Taxes levied and collected on property lying within the school district which is located in two counties would be paid to and received by the county treasurer of each county, and from the statutes heretofore cited said tax money could only be disbursed by the county treasurer of each county as provided by law and for the payment of school district indebtedness.

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In reading the statutes heretofore cited, which are appropriate to the question, we find no specific authority for the board of directors of the school district to lump all the school district money in one county by issuing a warrant directing the county treasurer of one county to pay all of the particular school district money to the county treasurer of another county in which the district is also located. Nor do we find any statutory authority which would authorize a county treasurer to make such a transfer of school funds.

Regarding the authority of the board of directors of a school district, the courts have declared that it has only such powers as are expressly conferred by statute. Thus, in the case of Consolidated School Dist. No. 6 v. Shawhan, et al., 273 S.W. 182, 1.c. 184, the court said:

"Under our state law the government of a school district, as well as the handling of the finances thereof, is vested in a board of directors duly elected by vote. Their powers and duties are prescribed by statute. * * *

"Plaintiff district is a corporation created by statute; its board of directors is what the statute makes it, having only such powers and functions as are expressly delegated to it. * * *"

And, again in the more recent case of Cape Girardeau School Dist. No. 63 v. Frye, 225 S.W. (2d) 484, the court, in declaring the authority of the board of directors of a school district, said at 1.c. 488:

" * * * A board of directors is but a creature of statute, and its members can exercise no authority unless the same is either expressly conferred or else arises by necessary implication from the powers that are conferred. * * *"

In view of the above rule relative to the authority of the board of directors of a school district, it is our view that, since the statutes are silent in giving authority to a board of directors to transfer school moneys in the manner about which you inquire, said transfer of school moneys could not be made.

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CONCLUSION

Accordingly, it is the opinion of this department that the board of directors of a school district located in two counties has no authority to issue a warrant directing the county treasurer of one county in which school moneys are received for the school district to pay said school moneys to the county treasurer of the other county in which the school district lies.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
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