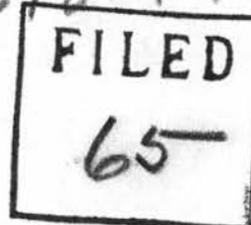


SCHOOLS: Action in mandamus is proper procedure to enforce payment of a judgment obtained against a school district.

May 4, 1951

Honorable Charles E. Murrell, Jr.
Prosecuting Attorney
Knox County
Edina, Missouri



Dear Sir:

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

"I would like to have a copy of your opinion quoted on page 69 of Missouri School Laws Publication, Number 10, for the year 1947, pertaining to tuition for nonresident students. The opinion was dated September 14, 1934.

"Please advise me, after review by you, if your conclusions are the same now and also we would like an answer to the following question:

"If the school district accepting the students should bring suit and obtain judgment for tuition, what is the procedure for collection of the same?"

At the outset, you request a copy of an opinion written by this office under date of September 14, 1934, and a copy of same is enclosed.

In connection with your question regarding the matter of collecting a judgment for tuition obtained against a school district, it is the duty of such school district, through its directors, to pay said judgment from the proper fund.

Honorable Charles E. Murrell, Jr.

In State ex rel. Black v. Renner, et al., 148 S.W. (2d) 809, an action in mandamus was instituted by a school teacher against the directors of five common school districts to enforce the payment of a judgment for wages previously obtained. In considering the question the court, at l.c. 811, said:

"The judgment in favor of relator was a joint and several judgment, and each school district was liable for the entire amount thereof. When that judgment became final it was the duty of each district, acting through its directors, 'to take such steps as the Constitution authorizes for the immediate payment' of the judgment. * * *"

In State ex rel. Hufft v. Knight, et al., 121 S.W. (2d) 762, there was also involved a proceeding in mandamus instituted by a school teacher against the directors of a particular school district to enforce a judgment previously obtained for services rendered by the teacher. At l.c. 764 the court, in ruling on the question, said:

"It will be noted from the stipulation filed by the parties that all the matters and things alleged in the petition for mandamus are true. The petition alleges that the directors can, under the law, certify the levy of an assessment of 65 cents on the \$100 valuation of the District, under the following statutes and constitutional provisions: Sections 9214, 9226, 9284 and 9261, R.S. Mo. 1929, Mo. St. Ann., Secs. 9214, 9226, 9261, 9284, pp. 7086, 7092, 7109, 7143, and Article 10, Sec. 11, Constitution of Missouri, Mo. St. Ann. Const. art. 10, Sec. 11. Therefore we presume that the requirements of these statutes have been met. If the directors can recommend to the county clerk a levy of 65 cents on the \$100 valuation and instead of doing so, merely recommend a levy of 20 cents on the \$100 valuation, which it is conceded is not a sufficient levy to pay the judgment, which the appellant holds against the School District, then mandamus will lie to compel

Honorable Charles E. Murrell, Jr.

the directors to certify such tax as can be legally levied and apply the surplus, after paying current expenses, to the payment of the judgment held by appellant.

"Mandamus is a proper remedy to enforce a judgment against a municipal or public corporation and it has been generally used for such purpose in this state. It is an ancillary proceeding to the main suit and when so employed is not a new suit, but simply process essential to jurisdiction. It is a means of enforcing the collection of a judgment against a municipal corporation and is the legal equivalent of an execution upon a judgment against an individual. State ex rel. Hentschel v. Cook, Mo. App., 201 S.W. 361; State ex rel. Edwards v. Wilcox, Mo. App., 21 S.W. 2d 930. Since an execution may not be run against the property of a school district or other political sub-division of the State (State, to Use of Board of Education, v. Tiedemann, 69 Mo. 306, 33 Am. Rep. 498; City of Edina v. School District, 305 Mo. 452, 267 S.W. 112, 36 A.L.R. 1532; Sec. 1161, R.S. Mo. 1929, Mo. St. Ann. Sec. 1161, p. 1424) the only other procedure available to a judgment creditor to enable him to collect his judgment is for a court of competent jurisdiction to issue its writ of mandamus, requiring the extension of a sufficient levy within the constitutional limits, to provide funds for the payment of the judgment. State ex rel. Hentschel v. Cook, supra; State ex rel. Edwards v. Wilcox, supra.

"Mandamus, of course, cannot be employed to control the discretion of one authorized to determine the levy necessary to provide funds necessary for a district. Yet, a school district owes the duty to pay an obligation established by a judgment against it, and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment. Its duty to do so

Honorable Charles E. Murrell, Jr.

results from the plain moral as well as the legal obligation of a municipality or district to pay its debts and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised. However, a court cannot by mandamus proceedings compel a municipal sub-division of the state to levy a tax in excess of the maximum fixed by the Constitution. *Bushnell et al. v. Drainage District, Mo. App., 111 S.W. 2d 946.* The duty of a school district to discharge its obligations, if it can do so by a levy within the limits provided by law, is mandatory upon the district and its directors, and it is mandatory that they certify a levy within the legal limits, sufficient to retire the obligations of the district and mandamus does not interfere with any discretionary powers entrusted to the directors. * * *

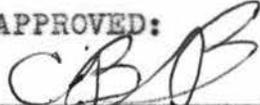
In view of the foregoing decisions it appears that, when a judgment is obtained against a school district and the board of directors thereof refuse to pay said judgment, the proper procedure to enforce payment of the judgment is the institution of a proceeding in mandamus against the directors of the school district. By a proceeding in mandamus, the school district against which judgment was obtained would be required to pay it from the proper fund or would be required to take the necessary steps to procure the extension of a sufficient tax levy within the constitutional limits to provide funds for the payment of the judgment. The latter would not be necessary if there was sufficient money in the proper fund to pay the judgment.

CONCLUSION

It is therefore the opinion of this department that, where a school district obtains judgment against another school district for tuition, the proper procedure for enforcing said judgment, in the event the school district against which it was obtained refused to pay it, would be the institution of a proceeding in mandamus.

Respectfully submitted,

APPROVED:



J. E. TAYLOR
Attorney General

RICHARD F. THOMPSON
Assistant Attorney General

RFT:ml

Enc