

SCHOLLS: Tuition payable to a consolidated high school district by common school district may be paid from either teachers' fund or incidental fund.

5-4-51

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Honorable Matt H. Reichert  
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Dear Sir:

This will acknowledge your recent letter, with enclosure of letter from the County Treasurer of Wayne County, requesting an opinion on the question whether a school warrant may be lawfully drawn on the teachers' fund by a rural school district in favor of a consolidated high school district, for the payment of tuition due said high school district.

Section 165.110, R.S. Mo. 1949, among other things, provides for the disbursement of school moneys out of six separate funds which are created by the statute. Among these six funds are the teachers' fund and the incidental fund. The statute further provides that the treasurer shall open an account for each fund, and then declares what money shall be deposited in each particular fund when it is received.

Regarding the matter of tuition fees received by a school district, such as a consolidated high school district, it appears that such fees shall be placed to the credit of the teachers' fund. Thus the afore-mentioned section, in part, provides:

"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. \* \* \*"

Honorable Matt H. Reichert

However, your question asks from which fund may tuition be paid by a common school district which is sending pupils to a consolidated high school district.

We have pointed out that the statute specifically provides for the fund in which tuition fees received shall be deposited, and we believe that the statute also clearly provides, without any ambiguity, the fund or funds from which tuition may be paid. Thus Section 165.110 further provides:

"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; \* \* \*" (Emphasis ours.)

From the above-quoted portion of the statute it appears that when a common school district sends its pupils to a consolidated high school district in order that they may attend the higher grades, the tuition which the common school district must pay may be paid from either the teachers' fund or the incidental fund if no part of the minimum guarantee is used for such purposes.

The minimum guarantee referred to in the statute would be the amount of money allotted by law out of the public school fund of the state for each elementary teaching unit to which the common school district would be entitled. Said amount would be \$750.00 for each teacher. It is so provided for in Section 161.040, R.S. Mo. 1949.

Construing Section 165.110, supra, as relating to the payment of tuition, it is our view that the common school district could pay the tuition due a consolidated high school district from either the teachers' fund or the incidental fund, with the

Honorable Matt H. Reichert

one limitation that none of the minimum guarantee, that is the \$750.00 for each teacher, could be used for the payment of such tuition. Consequently, so far as the teachers' fund is concerned, only those funds contained therein in excess of the \$750.00 minimum guarantee could be used for the payment of tuition.

We are familiar with the case of Linn Consol. H. Sch. Dist. v. Pointer's Creek Pub. Sch. Dist., 203 S.W. (2d) 721, wherein the Supreme Court of Missouri was considering Section 10366, R.S. Mo. 1939, now Section 165.110, supra, in connection with the payment of tuition. The court, in stating the fund from which tuition should be paid, said at l.c. 723:

" \* \* \* But defendant says that tuition to another district is payable only out of the teacher fund and cannot be paid out of the incidental fund, citing Section 10366, Revised Statutes of Missouri 1939, Mo. R.S.A., amended 1943, page 893. The statute does not so read. It requires the setting up of six separate funds among which are a teacher fund and an incidental fund. It provides that all tuition received by a district from outside pupils shall be placed in the teacher fund. Probably this is because the teacher burden is thus increased in the receiving district, but the statute is silent as to the fund which must be used to pay tuition to another district. We think the tuition which a district is compelled to pay to another district by Section 10458, cannot be paid out of the teacher fund and must be paid from the incidental fund."

In following the reasoning of the court in the above case it appears it held that tuition was only payable from the incidental fund because Section 10366 was silent as to the fund which must be used to pay tuition to another district.

Section 10366, R.S. Mo. 1939 (Section 165.110, R.S. Mo. 1949), which the court was construing in the above case, was amended in 1943. Prior to its amendment the statute made no provision for the fund or funds from which tuition should be paid, and therefore was silent as to the fund which must be used to pay tuition to another district. It is possible that

Honorable Matt H. Reichert

the court in writing its decision confused the provisions of Section 10366 as it appeared prior to the amendment with the provisions therein contained after the amendment. In any event, it does not now appear that the afore-mentioned section is silent in regard to the fund from which tuition must be paid. We feel confident that the Supreme Court will so hold if the question comes before it.

CONCLUSION

It is therefore the opinion of this department that the county treasurer may lawfully pay a school warrant drawn on the teachers' fund by a common school district in favor of the consolidated high school district, for the payment of tuition due said high school district, if no part of the minimum guarantee is used for such purpose.

Respectfully submitted,

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APPROVED:

  
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J. E. TAYLOR  
Attorney General

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