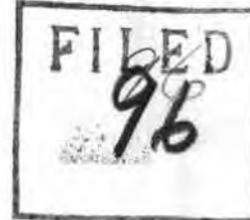


SCHOOLS: Under Public Law 815 - 81st Congress - State Board of Education is proper state agency to carry out purposes of the act and direct investment of moneys received and paid by the Federal government to the State Treasurer.

February 15, 1951

2-16-51

Honorable Hubert Wheeler  
Commissioner of Education  
Department of Education  
Jefferson City, Missouri



Dear Sir:

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

"Last year Congress enacted, Public Law 815-81st Congress, a law providing for surveys and state plans for school construction. This law authorizes an appropriation of federal funds to assist the several states to inventory existing school facilities, to survey the need for the construction of additional facilities in relation to the distribution of school population, to develop state plans for school construction programs and to study the adequacy of state and local resources available to meet school facility requirements. The federal act provides that each state shall be entitled to receive an amount equal to 50 per centum of its expenditures in carrying out the purposes of the act.

"In setting up state plans for the carrying out of this act it is necessary to indicate the proper state agency authorized to accept federal funds and the educational agency authorized to make application for funds under the federal school facilities survey act.

\* \* \* \* \*

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" \* \* \* I shall appreciate your advice and official opinion and response to the following questions:

"1. Are the laws of this state adequate for the acceptance of the federal act, Public Law 815--81st Congress, providing for survey and state plans for school construction programs?

"2. Is the State Board of Education the proper educational agency for the acceptance of federal funds, administration, and the carrying out of the federal act?

"3. Is the state treasurer the designated custodian for such accepted federal funds?"

In answer to your first question your attention is directed to Section 162.020, R.S. Mo. 1949, which specifically accepts the provisions of certain acts of Congress pertaining to vocational education. However, you will note that the last portion of said section provides as follows:

" \* \* \* and any other subsequent acts of congress which may provide federal funds for public schools or other educational agencies and for the necessary administration and supervision of the same, be and are hereby accepted."

Clearly, Public Law 815 - 81st Congress - is an act of Congress providing Federal funds for public schools or other educational agencies within the meaning of the above-quoted statute.

Section 162.030, R.S. Mo. 1949, provides as follows:

"That the benefits of all funds appropriated under the provisions of such acts are hereby accepted as provided in such acts."

The later section in accepting the benefits of all funds appropriated under the provision of such acts would, by reference, include the "subsequent acts of congress which may provide federal funds for public schools or other educational agencies."

Consequently, it is our thought that the provisions of the above statutes, as set out, constitute an acceptance of Public

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Law 815 - 81st Congress - and an acceptance of the benefits bestowed thereunder. Therefore, your first question is answered in the affirmative.

In answering your second question we will consider whether the State Board of Education is the proper educational agency and the sole agency (as defined in paragraph (13) of Section 210) for carrying out the purposes of Section 101 of the Federal Act.

Paragraph (13) of Section 210, Public Law 815 - 81st Congress, provides as follows:

"The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools."

In determining the "State educational agency" primarily responsible for the state supervision of public elementary and secondary schools in the State of Missouri, attention is directed to Section 1, Article IX of the Constitution of Missouri, 1945, which, in part, provides:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. \* \* \*"

Section 2, Article IX of the Missouri Constitution, further, in part, provides:

"The supervision of instruction in the public schools shall be vested in a state board of education, consisting of eight lay members appointed by the governor, by and with the advice and consent of the senate; provided, that at no time shall more than four members be of the same political party. The term of office of each member shall be eight years, except the terms of the first appointees shall be from one to eight years, respectively. \* \* \*

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" \* \* \* The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. The board shall prescribe his duties and fix his compensation, and upon his recommendation shall appoint the professional staff and fix their compensation. The board shall succeed the State Board of Education heretofore established, with all its powers and duties, and shall have such other powers and duties as may be prescribed by law."

Pursuant to Section 2, Article IX of the Constitution, supra, Section 160.090, R.S. Mo. 1949, was enacted, which, in part, provides:

"1. It shall be the duty of the state board of education to select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state at least one year immediately preceding his appointment, and removable at its discretion. The commissioner of education shall be a person who possesses educational attainment and breadth of experience in the administration of public education. The board shall prescribe the duties of the commissioner and fix his compensation, and upon his recommendation shall appoint the members of the professional staff and fix their compensation.

"2. The state board of education shall:

(1) Carry out the educational policies of the state relating to public schools as may now or hereafter be provided by law.

(2) Direct the investment of all moneys received by the state to be applied to the capital of any fund for educational purposes and to see that such funds are applied to such branches of educational interest of the state as by grant, gift, devise or law they were originally intended, and if necessary to institute suit for and collect the

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same and return it to its legitimate channel.

(3) Cause to be assembled such information relative to the public schools of the state as will reflect continuously their condition and management.

\* \* \* \* \*

(9) Make a report, annually on or before the first Wednesday after the first day of January, to the general assembly, when that body shall be in session; otherwise to the governor, for publication and transmission to the general assembly; said report to be for the last preceding school year, and to include; (a) a statement of the number of public schools in the state, the number of pupils attending such schools, their sex, and the branches taught; (b) a statement of the number of teachers employed, their sex, their professional training, and their average salary; (c) a statement of the receipts and disbursements of public school funds of every description, their sources, and the purposes for which they were disbursed; (d) suggestions for the improvement of public schools; and (e) such other information relative to the educational interests of the state as the law may require or the board may deem important.

(10) Require from the chief officer of each of the several divisions of the department of education, on or before the thirty-first day of August of each year, reports containing such information as the board deems important and desires for publication."

Inasmuch as the above-quoted section lodges the duty with the State Board of Education to assemble information relative to the public schools of the state, reflecting their condition and management and such other information relative to the educational interests of the state, we believe that the Board is the sole and proper "State educational agency" to carry out the purposes of Section 101, Title I, Public Law 815 - 81st

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Congress, and is therefore the proper agency to make the inventory and survey of existing school facilities as contemplated by the act.

Regarding the proper state agency which will be custodian of moneys which may be made available to the State of Missouri from the appropriation as provided in Section 101, Public Law 815 - 81st Congress, attention is directed to Section 15, Article IV of the Constitution of Missouri, 1945, which, in part, provides:

"All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. \* \* \*"

Under the language of the above-quoted constitutional provision the grant of moneys to the State of Missouri under Public Law 815 - 81st Congress-would constitute "moneys received by the state" which would be deposited in the state treasury and which would be held by the State Treasurer for the benefit of the respective fund to which they would belong.

Consequently, in answer to your third question the moneys given by the Federal government under authority of Section 101, Public Law 815 - 81st Congress, to the State of Missouri, and accepted by the State of Missouri, would be placed in the state treasury and be under the custody of the State Treasurer, and the State Treasurer would be the proper and legal custodian of said funds. The State Treasurer, as the custodian of said funds, would be the proper official to whom the Secretary of the Treasury of the United States would make payments for the use of the state educational agency in carrying out its function pursuant to Title I of the Federal Act.

Under Section 160.090 (2), supra, the authority is given to the State Board of Education to direct the investment of all moneys received by the state for educational purposes by

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grant, gift, devise or law.

Furthermore, regarding allotments or grants of funds from the Federal government to the State of Missouri for educational purposes, Section 10.120, Laws of Missouri, 1949, page 195, provides as follows:

"All allotments, grants and contributions of funds from the Federal Government which may be received for the period beginning July 1, 1949 and ending June 30, 1951, which may be paid into the State Treasury, under the provisions of Federal Acts which provide aid for public elementary and secondary schools, adult education, improvement of teacher preparation, construction of elementary and secondary public school plant facilities, and funds for the necessary administration and supervision, shall stand and are hereby appropriated to the State Board of Education. The State Comptroller is hereby authorized to prepare and certify to the State Auditor, and the State Auditor is hereby authorized to issue warrants for any such funds in the State Treasury, all in the manner required by rule and regulation prescribed by Federal authority or by the State Board of Education."

Under the above section any moneys paid by the Federal government to the state under authority of Public Law 815 - 81st Congress - now stands appropriated to the State Board of Education and would be paid out by warrant as prescribed by said Board.

#### CONCLUSION

It is therefore the opinion of the Attorney General of the State of Missouri that the laws of this state are adequate in constituting an acceptance of the provisions of Public Law 815 - 81st Congress - and benefits derived from appropriations made thereunder.

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It is further the opinion of the Attorney General that the State Board of Education is the sole and proper "State educational agency," as defined in paragraph (13) of Section 210 of the Federal Act, for carrying out the purposes of Section 101 of said act.

The Attorney General is also of the opinion that funds paid to the state under authority of Title I, Public Law 815 - 81st Congress, would be deposited in the State treasury and would be under the custody of the State Treasurer, and that said funds would be disbursed as directed by the State Board of Education.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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