

COUNTY TREASURERS:
SCHOOL DISTRICTS:
BOARD OF EDUCATION:
SCHOOL MONEY:

(1) A school board is under an obligation to certify a levy within the limits of its authority to discharge the district's obligations or bonds issued by the school district. (2) The board of education of a school district may not issue a warrant if there be insufficient money in the proper fund for the payment of said warrant unless it can be reasonably anticipated that there will be sufficient income during that school year to pay the warrant. (3) It is not permissible for the county treasurer to pay warrants drawn upon the sinking fund and interest fund from the moneys collected and placed in the incidental fund.



Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

July 14, 1954

Dear Mr. Holman:

By letter dated May 24, 1954, you requested an official opinion as follows:

"A school district voted and issued bonds for building purposes as provided by Section 165.040, R.S. Mo., 1949.

"The questions are:

"1. Is it mandatory for the board of education to set a levy for sinking and interest purposes in the estimates filed with the superintendent of schools as required under the provisions of Section 165.077, R.S. Mo., 1949, for the retirement of bonds and interest obligations?

"2. In the event the board of education failed to designate a levy for sinking and interest purposes in the estimate, but included such levy in the levy for incidental purposes, is it permissible for the board of education to issue warrants drawn upon the sinking and interest funds without providing a levy for such purposes? In connection therewith, we wish to call attention to the fact that said warrants were paid out of moneys collected from the levy for incidental purposes.

"3. If it is not permissible for the board of education to issue warrants

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drawn in such manner, is it permissible for the treasurer of the school district to pay said warrants from moneys collected for incidental purposes?

"4. If not, is the treasurer liable on his official bond for the payment of said warrants without having sufficient money in the proper fund from which to pay the warrants?"

In a subsequent letter you stated that the county involved is a fourth class county not having township organization, and that the school district is a consolidated district. You further stated that as of June 30, 1953, there was an overdraft in excess of \$4,000.00 in the sinking fund, and an overdraft in excess of \$500.00 in the interest fund.

The board of directors of school districts are authorized by Section 165.040, RSMo Cumulative Supplement, 1953, to borrow money to erect schoolhouses, etc., and to issue bonds for the payment of the money borrowed.

"1. For the purpose of purchasing schoolhouse sites, erecting schoolhouses, library buildings and furnishing the same, and building additions to or repairing old buildings, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of any such loan shall be decided at an annual school meeting or at a special election to be held for that purpose.

If two thirds of the votes cast on such proposition shall be cast for the loan, the board, subject to the restrictions of section 165.043, shall be vested with the power to borrow money, in the name of the district, to the amount and for the purpose specified in the notices as aforesaid, and to issue the bonds of the district in evidence thereof.

"2. When bonds are voted under this section for the erection of one or more schoolhouses, to be erected on the same or different sites in common school districts, such bonds shall not be negotiated by such board until such

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bonds have been deposited with the county or township treasurer of the county or township in which such district shall be situated, and upon the order of such board, and the payment to the county or township treasurer of the amount agreed to be received for the same by such board from the purchasers of such bonds. The county or township treasurer shall countersign such bonds and deliver the same to the person or persons named by such board of directors; but no such bonds shall be sold for such an amount that the net proceeds, after deducting expenses and commissions from the same, shall be less than ninety-five cents on the dollar of the face value thereof, and all refunding bonds issued by such districts, to be exchanged for outstanding bonds of such district, or for the purpose of being sold to raise sufficient funds to pay any outstanding bonds thereof, shall not be exchanged, negotiated or sold by the board of directors of such districts except as above provided, and not until the purchase price thereof, or the bonds to be exchanged therefor, shall be turned over to the county or township treasurer; and such treasurer shall write or print the words 'Paid by refunding bonds' across the face of such bonds so received in exchange, and sign the same before delivering such refunding bonds to such board. The county or township treasurer and his sureties shall be responsible, on his official bond, for all moneys, bonds or securities received by him under this section."

Section 165.050, Cumulative Supplement, 1953, provides:

"The loan authorized by section 165.040, shall not be contracted for a longer period than twenty years, and the entire amount of said loan shall at no time exceed, including the present indebtedness of said district, in the aggregate ten per cent of the value of taxable tangible property therein, as shown by the last completed assessment for

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state and county purposes, the rate of interest to be agreed upon by the parties but in no case to exceed the highest legal rate allowed by contract; when effected, it shall be the duty of the directors to provide for the collection of an annual tax sufficient to pay the interest on said indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time said principal shall become due."

Boards of directors are authorized by Section 165.063, RSMo Cumulative Supplement, 1953, to provide for a tax levy for a sinking fund to retire such bonds.

"Boards of directors are hereby authorized to make an estimate for the levy of a tax, not to exceed four-fifths of one per cent, upon all the taxable property of the school district at its assessed valuation, said tax to be levied and collected in the same manner as other taxes for school purposes; and the money arising from said tax shall constitute a sinking fund, and shall be used only for the redemption of any outstanding bonds of such district; * * *."

Provision for a tax levy to pay interest on such bonds is made by Section 165.067, RSMo 1949.

"Boards of directors are hereby authorized to make an estimate for the levy of a tax upon all the taxable property of the school district at its assessed valuation, said tax to be levied and collected as other taxes for school purposes--said tax to be sufficient in amount to pay the annual interest on all bonds of their respective districts, and to pay for the printing or engraving of any bonds that may be issued by virtue of this chapter."

Boards of directors are required by Section 165.077, RSMo 1949, to make an estimate of money needed for the ensuing school year.

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"The board of directors of each school district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of money to be raised by taxation for the ensuing school year, and the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the time required by law or authorized by the qualified voters of the district, to meet principal and interest payments on the bonded debt of the district, and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

Section 165.110, RSMo Cumulative Supplement, 1953, creates certain funds for school moneys, and provides for the disbursement of such moneys.

"1. 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 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; provided, however, that the board may by resolution direct that such

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signatures be affixed to such warrants in facsimile by a mechanical device adapted to such purpose which has been approved by the state auditor, state treasurer and state commissioner of education, or any two of them, sitting as a board for such purpose, as a device which provides adequate safeguards against the fraudulent or wrongful issuance of warrants. Warrants bearing such facsimile signatures placed thereon by such approved mechanical device shall be treated in all respects as if they bore the personal signatures of the president and the secretary or clerk of the board. 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.

(Emphasis ours.)

"2. The warrants drawn shall be in the following forms:

* * * * *

"3. 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 retirements of bonds

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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.

"4. 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

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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; * * *

* * * * *

"6. 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 161.040, RSMo."

The St. Louis Court of Appeals in State ex rel. Fredericktown School District No. 20 vs. Underwood School District No. 16 et al., 250 S.W. (2d) 843, made this statement concerning the duty of school boards to provide in their estimate for payment of the district's lawful obligations, l.c. 845, 846:

"There is no doubt of the duty of a school district to pay its lawful debts if it can do so by a levy within the limits fixed by law; and it is consequently mandatory that its officers shall certify a levy within such limits sufficient to discharge the district's obligations. In other words, in the performance of their duty the officers of the district have no discretion which can be rightfully claimed or exercised

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within the limits imposed by law upon the scope of their authority. Linn Consolidated High School Dist., v. Pointer's Creek Public School Dist., 356 Mo. 798, 203 S.W. 2d 721; State ex rel. Hufft v. Knight, Mo. App. 121 S.W. 2d 762. It follows, therefore, when such a debt has been reduced to judgment, that inasmuch as an execution may not run against the property of the district, the only remedy available to a judgment creditor to compel the performance of such duty is to sue out a writ of mandamus in a court of competent jurisdiction requiring the extension of a sufficient levy within the lawful limits to provide funds for the necessary purpose. State ex rel. Hufft v. Knight, supra; State ex rel. Edwards v. Wilcox, Mo. App., 21 S.W. 2d 930. However, there is always this to be observed--that the court will not compel the performance of an illegal act, so that the burden will be upon the relator to show that the rate which he would have the officers commanded to certify is not for any reason in excess of their authority. State ex rel. and to Use of Markwell v. Colt, Mo. App., 199 S.W. 2d 412; State ex rel. Hufft v. Knight supra."

We will not go into the manner of, or the prerequisites to, enforcement of such obligation, since we gather from your letter that you are primarily interested in the legality of payment of the principal, and interest, of the school bonds from the incidental fund.

In your question No. 2, you ask, "is it permissible for the board of education to issue warrants drawn upon the sinking and interest funds without providing a levy for such purposes? You stated that there is no money at all in the sinking fund, and interest fund, and that since no levy has been made, no income for these funds can be anticipated. If so, your question is answered by the last complete sentence of paragraph 1 of Section 165.110 (quoted in full above). That sentence reads as follows:

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"* * * 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."

See the enclosed opinion rendered to Mr. George V. Farris on September 6, 1938 concerning encumbering anticipated revenue.

By your third question you ask if it is permissible for the treasurer to pay from the incidental fund a warrant drawn upon the sinking fund or interest fund. That question is answered by the first sentence of numbered paragraph 4 of Section 165.110, supra. That sentence reads as follows:

"4. 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. * * *."

You then ask if the treasurer is liable on his official bond for the payment of the warrants without having sufficient money in the proper fund. That question is answered by the enclosed opinion rendered on January 11, 1935, to Honorable Charles A. Lee.

CONCLUSION

In the premises, therefore, it is the opinion of this office that: 1) A board of directors of a school district is under an obligation to certify a levy within the limits of its authority to discharge the district's obligations on bonds issued by the school district; 2) The board may not issue a warrant if there be insufficient money in the proper fund for the payment of said warrant unless it can be reasonably anticipated that there will be sufficient income during that school year to pay the warrant; 3) It is not permissible for the county treasurer to pay warrants drawn upon the sinking fund and interest fund from money collected and placed in the incidental fund.

Honorable Haskell Holman:

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Very truly yours,

JOHN M. DALTON
Attorney General

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