

June 27, 1963



Honorable Bill D. Burlison
Prosecuting Attorney
Cape Girardeau County
708 Broadway
Cape Girardeau, Missouri

Dear Mr. Burlison:

In your letter of June 10, 1963, you request an opinion from this office as to whether the county court of Cape Girardeau County may borrow from the school surplus funds money to be used for road purposes, such money to be repaid with interest when the funds for road purposes are paid into the County Treasury. You call attention to Sections 171.010, 171.110, 50.040 and 54.140, RSMo 1959, as possibly having some bearing on the question submitted.

I am enclosing herewith an opinion issued by this office on January 23, 1947, to Mr. O. F. Preusse, County Treasurer, Perry County, Perryville, Missouri, holding that the money and property belonging to the school fund under Chapter 171 can be disposed of only under the provisions of said chapter. The moneys and properties in this fund are generally referred to as the capital school funds and only the income from these funds can be used for school purposes. These funds are different from the money made available each year from taxation or other sources for the support of the public schools and which are required to be kept by the County Treasurer as provided in Section 54.160. I do not see how the capital school funds can be used in any manner in connection with the problem under consideration.

Section 50.040, RSMo 1959, reads as follows:

"Whenever there are outstanding any legal county revenue warrants of any county bearing six per cent interest which will be

redeemed by the taxes of the current year, and there are school moneys in the hands of the county treasurer belonging to the various districts which will not be required for the support of the public schools before the date when such revenue warrants will be paid, the county courts are authorized to direct the county treasurer to invest such surplus school moneys in the revenue warrants, and hold them for the use and benefit of the school districts until the money for the redemption of such warrants is received into the county revenue fund, when such money shall be applied to their payment."

Under this section, whenever there are outstanding any legal county revenue warrants and there are school moneys in the hands of the county treasurer belonging to the various school districts which will not be required for school purposes before the revenue warrants may become due, the county court may direct the county treasurer to invest such surplus school money in such revenue warrants and hold them for the use and benefit of the school district from which the funds were withdrawn. When this is done, it is, strictly speaking, not a borrowing from the school funds but merely a using of the school fund to invest in legal warrants that are outstanding against the county.

Enclosed is an opinion dated July 21, 1941, to Honorable W. H. Holmes, Prosecuting Attorney of Maries County, Vienna, Missouri, in which it was held that warrants should not be issued in excess of the amount budgeted and warrants issued in excess of the anticipated revenue are illegal and void. Another opinion enclosed was issued on November 16, 1936, to Honorable Paul N. Chitwood, Prosecuting Attorney, Reynolds County, Ellington, Missouri, stating that when the anticipated revenue is exhausted no more warrants should be issued. We are enclosing these opinions in the hope that they may be useful to you and the county court in resolving the difficulty the county is now having with its financial affairs.

Honorable Bill D. Burlison -3-

I am sure that you are familiar with the fact that the county court may issue tax anticipation notes under certain conditions as provided for in Chapter 50, RSMo 1959. I am enclosing a copy of an opinion dated March 31, 1950, to Honorable A. L. Gates, Prosecuting Attorney, Moniteau County, California, Missouri regarding the issuance of tax anticipation notes by the county.

Concerning the specific question you submit, it is our opinion that surplus funds in the hands of the county treasurer belonging to the various school districts may be invested in outstanding legal warrants of the county under the provisions and conditions as provided for in Section 50.040, RSMo 1959.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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Enclosures