

SCHOOLS:
STATE AID:

General Assemblies meeting subsequent to the regular session of the Seventy Fifth General Assembly are not required to make any of the appropriations stated in Sec-

tions 149.010, 149.020, 149.030, 163.031, 163.036 and 163.161 enacted by the Seventy Fifth General Assembly and referred to as the School Foundation Law prior to making any appropriations for purposes lower in priority than the support of public schools as listed in Section 36, Article III, Missouri Constitution. The General Assembly must still comply, however, with Section 3 (b), Article IX of the Missouri Constitution requiring that at least twenty-five percent of the state revenue be appropriated annually for the support of the free public schools.

April 2, 1970

OPINION NO. 209

Honorable William Baxter Waters
State Senator - 17th District
First National Bank Building
Liberty, Missouri 64068



Dear Senator Waters:

This letter is in response to your request for an opinion on the following question:

If there are insufficient funds to fully comply with Sections 149.010, 149.020, 149.030, 163.031, 163.036, and 163.161 enacted by the Seventy Fifth General Assembly and referred to as the School Foundation Law, and the General Assembly cannot appropriate for the schools the dollar amounts required by those sections, must the General Assembly, in light of Section 36, Article III of the Missouri Constitution listing the priorities of appropriations to be made of state funds, fully comply with the aforementioned School Foundation Law before appropriating other funds for purposes lower in priority as listed in Section 36 of Article III?

A prior opinion of this office to the Honorable Richard H. Ichord, March 19, 1958, No. 44, is dispositive of a portion of your question. In that opinion, which is enclosed for your reference, this office held that it is not necessary that all appropriations

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in a category of Section 36, Article III of the Constitution of Missouri must be made before any appropriation in any succeeding category can be made. As stated in Opinion No. 44 (Opinion 44, supra, page 5), the "real purpose of the constitutional provision is to prevent a General Assembly from making appropriations in the lower categories and failing to make appropriations in the preceding ones."

It should be noted that neither Section 36, Article III, nor Opinion No. 44 make mention of specific dollar amount appropriations. However, the School Foundation Law purports to require that specific dollar amounts be appropriated for the State School Moneys Fund. For example, in subsection 7 of Section 163.031, it is stated that in the fiscal year 1969-1970, \$234,000,000 be transferred by the General Assembly to the State School Moneys Fund, less the amount derived from the tax on cigarettes provided for in Section 149.020. After mentioning specific amounts for other years, the aforementioned subsection states that the General Assembly shall increase the amount transferred to the State School Moneys Fund in the preceding fiscal year by at least \$35,000,000 annually for the fiscal years 1970-71, 1971-72, and 1972-73. Thus, the School Foundation Law purports to make certain dollar requirements on the General Assembly in passing appropriations for public education. In addition, subsection 4 of Section 163.031 states:

"4. No district shall receive annually, during the biennium beginning in 1969, or thereafter, a less amount per pupil in average daily attendance from the state foundation program fund than it received in 1968-69 from the state appropriation for transportation allowance, special education, flat grant aid, first level equalization, second level equalization and teacher preparation aid."

This indicates that specified dollar amounts must be appropriated every year by the General Assembly for the School Foundation Law.

Attention is called to the fact that Section 163.031 sets forth methods for computing amounts to be transferred to the State School Moneys Fund both during the biennium beginning in 1969 and during succeeding years. The question then arises, does a present General Assembly have the power to require future General Assemblies to make specific appropriations? In the opinion of this office to Honorable William R. Nelson, dated February 1, 1954 (enclosed for your reference), this question was answered in the negative. In State ex rel. Fath v. Henderson, 160 Mo. 190, 60 S.W. 1093 (1901), upon which the aforementioned opinion was based, the Missouri Supreme Court stated:

"Let it be freely admitted that one General Assembly can not tie the hands of its successor, and that although this tax is set apart into a special fund, it still belongs to the State and may be appropriated to another and different use, . . ." Id. at 214.

The fund referred to in Henderson was a fund created from the proceeds of an inheritance tax for the use of the State University.

Having decided that a present General Assembly cannot bind future General Assemblies, of what effect are the aforementioned provisions of the School Foundation Law that purport to require specific appropriations by succeeding General Assemblies? Assuming that the General Assembly does not act futilely, and that the General Assembly is aware of its own limitations, the aforementioned statutes can only be expressions of hope by the present General Assembly that subsequent General Assemblies will follow the recommendations contained therein. However, as stated above, these recommendations are in no way binding on future General Assemblies. As the Legislature did not intend that the School Foundation Law bind future Legislatures, it would be inconsistent with this intent to assume that the Seventy Fifth General Assembly desired to bind itself in subsequent special sessions.

This leaves only the provisions of Section 3, Article IX of the Missouri Constitution, to set forth the minimum amounts that must be appropriated by any General Assembly for the support of free public education in the state. That section requires that at least twenty-five percent of the annual state revenue be so appropriated. Because future General Assemblies are not required to appropriate any of the amounts expressed in the School Foundation Law, General Assemblies can certainly make appropriations for purposes lower in priority than the support of public schools, as listed in Section 36, Article III of the Missouri Constitution, before appropriating the full amounts stated in the School Foundation Law.

CONCLUSION

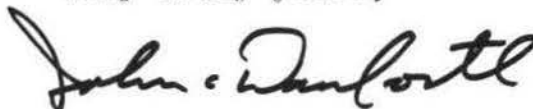
Therefore, it is the conclusion of this office that General Assemblies meeting subsequent to the regular session of the Seventy Fifth General Assembly are not required to make any of the appropriations stated in Sections 149.010, 149.020, 149.030, 163.031, 163.036 and 163.161 enacted by the Seventy Fifth General Assembly and referred to as the School Foundation Law prior to making any appropriations for purposes lower in priority than the support of public schools as listed in Section 36, Article III, Missouri Constitution. The General Assembly must still comply, however, with

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Section 3 (b), Article IX of the Missouri Constitution requiring that at least twenty-five percent of the state revenue be appropriated annually for the support of the free public schools.

This opinion, which I hereby approve, was prepared for me by my assistant, Thomas L. Patten.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General

Enclosures:

Op.No. 44, Ichord, 3-19-58
Nelson, 2-1-54