SCHOOLS:
ELECTIONS:

A six-director school district may accept money donated to the district by a dealer in bonds for the purpose of defraying the cost of an election on the question of whether the district should incur bonded debt.

OPINION NO. 225

July 20, 1970

FILED
225

Honorable Thomas A. Walsh
State Representative
District No. 52
1820A Warren Street
St. Louis, Missouri 63106

Dear Representative Walsh:

This official opinion is issued in response to your request for a ruling on the following question:

> "It has come to my attention that certain school districts in Missouri are holding school bond elections, the cost of which are paid for by the companies dealing in these bonds.
>
> "I would like to have your opinion as to the legality of a school district accepting money from a dealer in bonds for the purpose of defraying the cost of the election which authorized their issuance."

For the purposes of this opinion, we assume that the money is donated by the dealer in bonds to the district for the purpose of financing in whole or part an election on a proposition to incur bonded indebtedness. You have furnished no facts from which it could be assumed that the payment of the election expenses by the bond dealer is in exchange for an agreement by the school board to sell some or all of the bonds to the dealer. Therefore, we are not taking a position on that situation. We assume that the only incentive for the dealer paying money to defray the election expenses is his desire to purchase some or all of the bond issue if the voters approve the proposition. Based on these assumptions, we interpret your question to be whether a six-director school district may legally accept money from a dealer in school bonds to defray the cost of an election at which a proposition to incur bonded indebtedness is placed before the voters of the district.

A six-director district is expressly authorized by Section 165.011, RSMo 1967 Supp., to accept money donated to it for a specific purpose.

> ". . . Money donated to the school districts 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."

Just because the dealer in bonds may have a personal interest in having an election held and hopes that the voters will approve the proposition does not, in our opinion, legally void the express grant of power to the school board to accept money earmarked by the donor for a specific purpose. See Opinion No. 35, dated April 29, 1958, to Honorable Thomas D. Graham and Opinion Letter No. 245, dated March 27, 1970, to Honorable James Millan, which reach conclusions consistent with the foregoing.

Furthermore, we do not believe that the legality of the election would be affected in any way by the fact that a dealer in bonds contributed part or all of the money required to conduct it. In Tucker v. McKay, 131 Mo.App. 728, 111 S.W. 867 (St.L.Ct.App. 1908), plaintiff contested action taken at an annual school meeting in which it was voted to move the school house. After a favorable vote was received on the question of whether the school house should be moved, someone asked the board about providing the necessary funds for moving the school house. Whereupon, two of the voters present stated they would pay all of the expense of moving the school house and, on this promise, the question of procuring funds for that purpose by the district was dropped. Plaintiff challenged the decision and authorization to change the location of the school house on a number of grounds. One of his contentions was that no provision had been made to provide funds for the removal and, therefore, the action taken at the meeting was incomplete. The court disposed of this contention as follows:

> "No provision was made by the district to provide funds for the removal, for this reason it is contended the vote to move was incomplete and did not authorize the defendant trustees to move the house to the new site. As no fund to move the house was provided for at the meeting, its removal cannot be made a charge to the district; but, as two of the voters present agreed to pay the expense of the removal, if the trustees are willing to incur the risk of the removal on that promise, we know of no reason why a court should enjoin the exercise of their faith in the premises, especially when, as in this case, it seems to be well founded." Id. at 868.

The fact that two voters, presumably voters in favor of moving the school house, promised to pay the expense of removal did not affect the legality of the action taken at the meeting. Similarly, we do not believe that the donation of money to the school district to defray the cost of submitting a proposal to incur bonded indebtedness to the voters of the district, even though made by a party interested in having an election held, would affect the legality of an election at which a bond issue was authorized. Elections should be so held as to afford a free and fair expression of the popular will and are not lightly set aside. Armantrout v. Bohon, 349 Mo. 667, 162 S.W.2d 867, 871 (1942). The donation of money to pay the cost of an election does not, in and of itself, prevent the free and fair expression of the people at the polls.

CONCLUSION

Therefore, it is the conclusion of this office that a six-director school district may accept money donated to the district by a dealer in bonds for the purpose of defraying the cost of an election on the question of whether the district should incur bonded debt.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,

John C. Danforth

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 35
4-29-58, Graham

Op. Letter No. 245
3-27-70, Millan