

September 29, 1970

Answered by - Voigts  
OPINION LETTER NO. 507

Honorable Fred W. Meyer  
State Representative  
District No. 104  
Route #3  
Wentzville, Missouri 63385



Dear Representative Meyer:

This is in response to your request for an opinion of this office with respect to the following inquiry:

"A recent opinion issued by Attorney General John Danforth has influenced many voters in the Wentzville R-IV School District to vote against a proposed school levy. Our Board of Education has determined that school cannot open unless a levy is approved. The district has no reserve funds to finance the opening of school before a levy is approved by the voters.

"Finally, as long as the district is not assured of being able to complete 180 days of school, the Board of Education is not in a position to accept State Apportionment and thereby obligate the district to repay the State Aid next year.

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"Many voters now disregard the explanation of the districts fiscal crisis as explained by the Board of Education because of the Attorney General's recent opinion.

"Because of the Wentzville Districts unique fiscal situation, it would be helpful if the Attorney General would issue a public statement in particular reference to the Wentzville District to make it clear that approval of a levy is the only assurance that public schools can be opened and sustained for 180 days in the Wentzville RIV District."

The opinion to which you refer is Attorney General Opinion No. 446, Esser, September 4, 1970, copy enclosed. That opinion, which stated the law applicable to a given factual situation, held that:

"If all available funds are insufficient to provide for a full nine month term, the school board may refuse to open the schools within its district if it has arranged for all pupils within the district to be educated in another district. If such arrangements are not or cannot be made, then the school board must open and operate its schools until all financial resources are exhausted. When all financial resources have been exhausted, the school board is authorized to close its schools."

Although you have provided us with various data concerning the school district's finances, we decline to make an evaluation of that data and the financial condition of the school district as demonstrated thereby. Such is unnecessary since you state the district's financial condition is such that there are insufficient funds to open the schools for any period of time, however short.

You state a question has arisen as to the interpretation of the statement in our previous opinion that, "the school board must open and operate its schools until all financial resources are exhausted." A school district need not expend the last penny in its account before it is authorized to close its schools for lack of funds. Whether a school must be closed due to lack of funds is a decision which has been entrusted by the Missouri Constitution and statutes to the reasonable discretion of the school board of

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a district. In reaching this decision a board might take into consideration the amount of money required to provide for certain fixed expenses of the district such as maintenance and security of the district's buildings and other property, insurance premiums, debt service, and any other fixed expenses or charges which are or will be due and payable during the current school year, even though the schools are not in actual operation. These are some of the factors which the board might consider in determining whether all available financial resources have been exhausted so as to warrant the closing of the schools, or, in some situations, warrant decision not to open the schools for any period of time, however short.

If the school board has reasonably determined that there are insufficient available funds to provide for the opening of school for any period of time, however short, the district is not obligated to open its schools. The school district is not required to do that which is financially impossible.

Your inquiry with respect to the apportionment of state funds is answered by the Opinion of the Attorney General, No. 501, Meyer, issued this date. A copy of that opinion is enclosed.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures:

Op. No. 446  
9-4-70, Esser

Op. No. 501  
9-29-70, Meyer