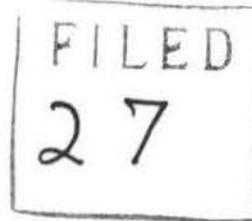


February 14, 1972

OPINION LETTER NO. 27
Answer by Letter - Klaffenbach

Honorable J. Anthony Dill
Missouri State Representative
8011 Grandvista Avenue
St. Louis, Missouri 63123



Dear Representative Dill:

This letter is in response to your opinion request in which you ask:

"Please provide your opinion on the legal effect of a school board and a superintendent entering into an overlapping contract in the following regards:

"1. Does the constitution render the entire new contract void or does it merely make it illegal for the school district to pay the increased rate of compensation over and above the compensation provided for in the prior contract?

"2. In a situation where a school district may have entered into a series of overlapping contracts for compensation of a superintendent, does the school district have the authority to recover a refund of any additional compensation paid to the superintendent in accordance with a subsequent overlapping contract and does the school district have a legal obligation to insist upon or sue for any additional compensation paid?"

First of all we wish to note that we do not have the precise facts of a particular case before us and therefore answer your questions in general.

Honorable J. Anthony Dill

You refer to our Opinion No. 171, dated May 4, 1971, to the Honorable Donald J. Gralike, copy enclosed, in which we held that the constitutional provisions therein cited prohibited such a school board and the superintendent from terminating a partially performed three-year contract and executing a new three-year contract providing for the performance of the same duties at a greater compensation when the only reason for so doing is to increase the superintendent's compensation before the expiration of the current contract.

In answer to your first question the new contract is void to the extent that it overlaps with the first contract, since an essential element of the contract, the consideration, is not lawful. We do not determine here whether in the particular case the contract is valid with respect to the period of time which it may by its terms extend beyond the term of the original contract.

In answer to your second question, in such a case, it must be recognized that school funds are held in trust, *Veal v. Chariton County Court*, 15 Mo. 412 (1852) and are not private funds, *State v. Powell*, 221 S.W.2d 508 (Mo. 1949). Likewise, it is well settled that unauthorized payments of public moneys by an official, particularly when made in direct violation of positive law, may be recovered, *Kansas City v. Halvorson*, 177 S.W.2d 495 (Mo. 1944), *State v. Powell*, *Id.* It follows in our view that it is axiomatic that such a trustee of public funds must take whatever legal action is required under the circumstances to protect, preserve and in this case, recover, such funds.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:

Opinion No. 171, 5/4/71, Gralike