



JOHN C. DANFORTH  
ATTORNEY GENERAL

OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

April 5, 1976

OPINION LETTER NO. 8

Dr. Arthur L. Mallory  
Commissioner of Education  
Department of Elementary and  
Secondary Education  
6th Floor, Jefferson State Office Building  
Jefferson City, Missouri 65101

Dear Dr. Mallory:

This is in response to your request for an opinion from this office as follows:

"Is a board of education that has authorized the borrowing of funds for the use of the district under provisions of section 165.131, RSMo, required to repay the loan within the calendar year in which the loan was made?

"Prior to July 1, 1974, school districts, other than urban districts, had no statutory authority to issue tax anticipation notes. However, the Missouri Supreme Court held in *First National Bank of Stoutland v. Stoutland School District R-II* (319 S.W. 2d 570) that all districts not authorized to issue tax anticipation notes could borrow money by virtue of a self-enforcing provision of the Missouri Constitution. However, such a loan would have to be repaid during the calendar year in which the loan was made."

As stated in your opinion request, prior to July 1, 1974, school districts, other than urban districts, had no statutory authority to

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issue tax anticipation notes. As we construe the Supreme Court decision in First National Bank of Stoutland v. Stoutland School District R2, 319 S.W.2d 570 (Mo. 1958), the court's opinion held school districts had constitutional authority to borrow money in an amount not exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years to be repaid from income and revenue provided for such year. It did not hold that the loan had to actually be repaid during the calendar year in which it was made. See State of Missouri ex rel. Strong, et al. v. Cribb, 273 S.W.2d 246 (Mo.Banc. Nov. 1954). Compare Grand River Tp., De Kalb County v. Cooke Sales & Service, Inc., 267 S.W.2d 322 (Mo. Div. No. 1, Apr. 1954) and dissenting opinion Hyde, J., in State of Missouri ex rel. Strong, et al. v. Cribb, supra at 251.

As heretofore stated, the legislature enacted Section 165.131, RSMo, providing for the issuing of tax anticipation notes by any school district as follows:

"The board of education of any school district in this state, upon a vote of a majority of the members of the board, may borrow funds for the use of the various funds of the district, including the debt service fund, and may issue negotiable notes in evidence thereof, payable out of the revenues derived from school taxes, for the purposes of the funds of any year in which the notes are issued. The notes may be issued at any time or from time to time between June thirtieth and December thirty-first in any year. A separate note shall be issued to evidence the borrowing for the benefit of each fund, and shall bear on its face appropriate reference to or designation of the fund for the use of which the funds evidenced by the note are borrowed. The aggregate principal amount of the notes issued in any year for the use or benefit of any fund shall not exceed fifty percent of the amount of the school board's estimate of the requirements for the fund and of the tax required to be levied for the purposes made for such year, including, however, the amount to be derived from any increases in rate of levy authorized by the electors of the district. The notes shall be payable in not to exceed six months from date of issue, and may bear interest at a rate not to exceed

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four percent per annum, payable at maturity. The proceeds of the notes shall be placed to the credit of the respective funds for the use and benefit of which the borrowing was made, as evidenced by the notes, and subject to the right to make transfers from and to funds as otherwise permitted by law, the proceeds of the notes shall be used and expended only in payment of the expenses and obligations properly payable from the funds respectively, and incurred or to be incurred against the funds during the year for the expenses of the year, or in payment of principal and interest on the notes. The notes may be payable to bearer or to the order of a named payee, and may be in substantially the following form:

TAX ANTICIPATION NOTE  
FOR \_\_\_\_\_ FUND

\_\_\_\_\_ School District of \_\_\_\_\_ County,  
State of Missouri  
No. \_\_\_\_\_ Date of issue \_\_\_\_\_ \$ \_\_\_\_\_

The \_\_\_\_\_ School District of \_\_\_\_\_  
County, Missouri, will pay on \_\_\_\_\_ at  
the office of the Treasurer of said School  
District, or at the \_\_\_\_\_ Bank in \_\_\_\_\_,  
to (bearer; or \_\_\_\_\_ or order), the sum of  
\_\_\_\_\_ with interest thereon from date of is-  
sue at the rate of \_\_\_\_\_% per annum, payable at  
maturity, out of funds derived from taxes for  
school purposes for the \_\_\_\_\_ fund, for the  
school year beginning July 1, 19\_\_\_\_, upon due  
and proper endorsement and presentment hereof.

THE \_\_\_\_\_ SCHOOL DISTRICT  
BY \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Clerk or Secretary"

Under this statute, tax anticipation notes may be issued at any time or from time to time between June 30 and December 31 in any year and the notes shall be payable in not to exceed six months from date of issue and payable at maturity.

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As we construe this statute, any school board may issue tax anticipation notes on July 1 and any time thereafter until December 31 which notes shall be payable in not to exceed six months from the date of issue.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH  
Attorney General