SCHOOL AND SCHOOL DISTRICTS: Tuition and school warrants.

8-24

August 18,1933

FILED

39

Hon. Orin J. Adams
Prosecuting Attorney
Caldwell County
Kingston, Missouri

Dear Sir:

In your letter of July 26th, 1933, addressed to this department, you request an opinion relative to the school law. Your letter is as follows:

> "Your opinion is respectfully requested relative to the School law on the following proposition:
>
> A girl, whose mother is dead and whose father is a resident of the state of Nebraska, and who contributes $10.00 per month for the support of the girl, moved into a rural school district from Nebraska. She attended High School at Hamilton, in another district, as a freshman last year, and at the close of the school years, the Hamilton Board of Education requested payment of the tuition, and without the authority of the Board, and without the signature of the President of the Board to the warrant, the Clerk of the district issued a warrant to the Hamilton Board of Education for the payment of the tuition claimed which warrant was cashed and paid notwithstanding the fact that the same was not signed by the President of the Board. The girl resides with an uncle.
>
> I would like to have your opinion, FIRST, as to whether the Hamilton Board of Education could be compelled to refund the money so paid and received by them, and SECOND, as to whether the district was and is

liable for the payment of tuition in such cases."

We shall endeavor first to take up your second question "as to whether the district was and is liable for the payment of tuition in such cases." It is our opinion that prior to the 1931 session of the Legislature that the district would not have been responsible for the tuition of the high school student mentioned in your letter. Section 9207 R. S. Mo. 1929, would have been the governing section, said section being as follows:

> "The board shall have power to make all needful rules and regulations for the organization, grading and government in their school district--said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit forthwith a copy of the same to the teachers employed in the schools; said rules may be amended or repealed in like manner. They shall also have the power to suspend or expel a pupil for conduct tending to the demoralization of the school, after notice and a hearing upon charges preferred, and may admit pupils not residents within the district, and prescribe the tuition fee to be paid by the same: Provided, that the following children, if they be unable to pay tuition, shall have the privilege of attending school in any district in this state in which they may have a permanent or temporary home: First, orphan children; second, children bound as apprentices; third, children with only one parent living, and fourth, children whose parents do not contribute to their support: Provided further, that any person paying a school tax in any other district than that in which he resides shall be entitled to send his or her children to school in the district in which such tax is paid and receive credit on the amount charged for tuition to the extent of such school tax."

In 1931 the Legislature passed the following law relating to tuition. Section 16, p. 343, Laws of Mo. 1931:

> "The board of directors of each and every school district in this state that does not maintain an approved highschool offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per-pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota; if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year; but the attendance of such pupil shall not be counted in determining the teaching units of the district maintaining the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental expenses. In case of any disagreement between districts as to the amount of tuition to be paid, the facts shall be submitted to the state superintendent of schools, and his decision in the matter shall be final: Provided further, that when any school district makes provision for transporting any or all of the children of such district to a central school or schools and the method of transporting and the amount paid therefor is approved by the state superintendent of schools, the amount paid in state funds for transportation, not to

> exceed three dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district: Provided, the provision of this act regarding the payment of tuition and transportation shall apply if the students attend any school supported wholly or in part by state funds."

As the high school student had evidently finished the district school and was pursuing her high school studies at the Hamilton high school, we think the above section is applicable. This section does not exempt anyone and the fact that the student in question had attended the district the prior year, in our opinion under this section the district would be compelled to pay her tuition regardless of the fact that she had been living with an uncle prior thereto and that her mother was dead and her father out of the state.

There has been some question as to the constitutionality of the above section. The e has been no direct action to test its constitutionality, and we are not passing on the question in this opinion, but, in giving you the opinion of this department, we are assuming that it is constitutional.

Section 9207 quoted above would still exempt the high school student in question from being personally liable from any tuition due to the fact that 'one of her parents is dead.'

As to your first question as to whether or not the Hamilton Board of Education could be compelled to refund the money so paid and received by them presents a peculiar situation. The Hamilton high school board has done nothing illegal in the demanding and receiving the money for the tuition, provided that the tuition was rightly due the district, but there enters the question of the warrant itself. The board of directors of the rural district did not order the warrant issued, the president of the board did not sign the warrant, the clerk issued the warrant and the same was cashed. We are at a loss to understand why a county treasurer would pay a warrant in such form.

Section 9312 R. S. Mo. 1929, provides the form of warrant:

> "The warrants thus drawn shall be in the following form, and shall be signed by the president of the board and countersigned by the district clerk:" * *No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate fund;" * * *"

Section 9311, omitting the parts which are not pertinent provides the duty of the president with respect to the warrant:

> "* * *and further provided, that before drawing any such warrant, the president of the board shall first visit the office of the county or township treasurer, and record his signature in a book to be kept in the office of said trasurer for that purpose, and for making such trip such president of the board shall be allowed one dollar per day and his necessary traveling expenses, payable out of the incidental funds of his district."

We are citing you herewith the decision which clearly shows that the warrant in question was illegal. School district v. Correll, 220 Mo. A. l. c. 325, 329, 331:

> "* * *This action is brought by a common school district against the county treasurer to recover funds wrongfully and illegally paid out by him. On trial to a jury the verdict was for plaintiff in the sum of $1411.20, and from the judgment thereon, defendant has appealed.* * *"

> "* * *There was also an offer to prove that the immediate predecessor in the office of the president of board had authorized C. A. Wells to issue warrants and sign the president's name by 'C. A. W.' There was no attempt to prove that any member of the board, other than the president, had any knowledge of such manner of issuing and signing warrants of the district or ever consented to such action in any manner. The most that can be said as to the offer of proof in respect to the board as a whole or members other than the president having knowledge thereof, is that, since a great number of warrants were signed in the manner heretofore indicated over a period of years, the board as a whole, must, by inference, have had knowledge thereof. But in a suit of this character no such inference can fairly be drawn. Our statute in relation to the payment of district

indebtedness of districts such as here, evidently was intended to place every possible safeguard around the issuance and payment of warrants. It requires an order of the board of directors and the warrant must specify clearly the species of indebtedness. The president of the board shall first visit the office of the county treasurer and record his signature in a book to be kept for that purpose. (Sec. 11222, R. S. 1919). It is also provided that the warrants shall be drawn in a particular form set out in the statute, 'and shall be signed by the president of the board and countersigned by the district clerk.' It is further provided that, 'No Treasurer shall honor any warrant unless it be in the proper form etc.' (Sec. 11223 R. S. 1919)."

"* * *The law, as heretofore indicated, has placed every safeguard around the paying out of the school districts' moneys. The act of the county treasurer in paying these warrants was directly in the face of the statute. The warrants signed by the clerk and payable to the clerk were in themselves a warning. The district is out its money for which no benefit was received. The act of the clerk was fraudulent. To permit the district to be thus defrauded of its money by the act of its agents would absolutely nullify the statutory safeguards the Legislature has been fit to provide. While no improper motive or lack of good faith can be attributed to defendant in this case, we do not believe it to be a situation in which the exception to the general rule of estoppel as to municipal corporations can be invoked. We hold, therefore, the trial court did not err in sustaining the objection to the evidence offered by defendant relative to an estoppel.

Some contention is made in regard to the fact that the president failed to record his signature with the treasurer as required by

> law. This was a duty which the law imposed but his failure to perform that duty can in no way effect the merits of this controversy. The warrants did not purport to be signed by him. The fact that his name was not recorded could not have misled the treasurer. More than that, there is no contention that he was misled thereby, but the principle defense is bottomed on the proposition that the clerk was authorized to sign the president's name. If such were true and estoppel would lie, the recording of the president's signature could not possibly have affected the situation.
>
> It is urged that defendant's duties and obligations were those of a bailee to exercise ordinary care to keep the property safe and return it when the time of bailment had expired as at common law. That could only be true where the statute fails to state what the treasurer's duties are. As heretofore pointed out, the statute specifically provides under what circumstances money of the district may be disbursed. Therefore the law of bailor and bailee has no application to this case.

In the above case the president of the board had permitted the clerk to sign his name for more than five years, thus we see the treasurer was held liable. In the instant case you state that the president did not even sign his name or authorize it to be signed by any one else.

In view of the foregoing authorities, it is the opinion of this Department that an action would lie to recover from the county treasurer the amount of the warrant in question by the rural school district.

Yours very truly,

OLIVER W. NOLEN
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

OWN:MM