

SCHOOLS AND SCHOOL
DISTRICTS:
APPROPRIATIONS:

School funds may not be spent by boards
of directors for repairing or building of
public highways leading to the schools.

April 26, 1939

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Mr. L. Cunningham, Jr.
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Camdenton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein
you request an opinion on the following statement of
facts:

"The school district have voted to
furnish transportation for their
students and there is a certain
stretch of road about one-fourth
mile long which will have to be
worked and graveled. The road
district does not have the funds
necessary to do the work, however,
the school district has a sufficient
sum of money left in its incidental
funds to have the work done. I was
of the opinion that the school dis-
trict could not use the money in
the incidental funds to build or
repair roads. However, the district
asked me to secure your opinion and
would appreciate you sending it to
me in duplicate in order that I may
give the Board of Directors a copy."

In dealing with school funds we find that the rule
is laid down in Volume 56 C. J., at page 550, Section 656
in the following language:

"School funds in the hands of school
officers or boards are in the nature

of trust funds for the benefit of the public dedicated to specific purposes, and do not belong to the district or to the district officers."

As to the powers and duties of the board of directors we find in Volume 56 C. J., page 294 at section 152, the rule is stated as follows:

"A county board of education or of school trustees, although a creature of the law, may exercise any powers authorized by law, it however has in general only such powers as are expressly conferred upon it by constitutional or statutory provision or powers which are incidental to those expressly conferred.* * * * *"

On the question of the construction of statutes which confer powers and duties on boards of education, we find the rule stated in Volume 56 C. J., page 332, section 202, as follows:

"It has been held that statutes conferring powers or imposing duties of regulation and administration of schools must be strictly construed, and must be treated not merely as grants of power but also as limitations thereon; but there is also authority, to the contrary, that such statutes should be liberally construed with a view to effectuating their purpose. Any doubt as to the existence or possession of a particular power, or any ambiguity in the terms of the grant, should ordinarily be resolved against the power and in favor of the people; but powers conferred by law upon a board or officer for public purposes are not to be deemed taken away or withdrawn by a subsequent statute merely by implication."

Section 9233, R. S. Mo. 1929, in speaking of the application of school moneys, provides in part as follows:

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected; * * * * *

In the case of State ex rel. Humphries v. Thompson, 64 Mo. 26, the rule is stated that: "School taxes can only be applied to the purposes for which they are levied."

Section 9311, R. S. Mo. 1929, provides in part as follows:

"Upon the order of the board of directors, it shall be the duty of the district clerk to draw warrants on the county treasurer in favor of any party to whom the district has become legally indebted, either for services as teacher, for material purchased for the use of the school, or material or labor in the erection of a schoolhouse for said district--the said warrant to be paid out of any moneys in the appropriate funds in the hands of the said treasurer and belonging to the district. The species of indebtedness must be clearly stated and should be drawn on its appropriate fund; all moneys for teachers' wages on the teachers' fund; all moneys used in the purchase of a site, erection of building thereon, and furnishing the same, on building fund; and all other expenses to be paid out of the incidental fund; * * * * *

Your question is whether or not the money for the repair and building of a public highway could be paid out of the "incidental fund." The moneys which go into creating the "incidental fund" are derived from taxation. It

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appears from your request that in as much as the lawmakers have authorized the voters of the district to vote transportation of the pupils, would that authorization by implication authorize the board to build or repair public highways in order that transportation may be effectually carried out.

From an examination of our statutes we find that the lawmakers have seen fit to set up another system for construction and maintenance of highways which is separate and apart from our school system. For instance, Sections 7890 and 7891, R. S. Mo. 1929, provide for a special tax for such purposes. Our school taxes are for educational purposes and for such other purposes that are incidental to the education of the children of this state.

In the case of City of Edina, etc. v. School District of City of Edina et al., 267 S. W. 112, it was held that such tax bill for the improvement of a street abutting the properties of the public school was not chargeable against the property of said school district. This case quite plainly shows that the lawmakers have not intended that public school funds be used for public road purposes. This is a question wherein a doubt is raised as to the existence of the power of the board of directors to spend public school moneys on public highways, and as stated in the citation, supra, relating to construction of statutes if there is a doubt or ambiguity in the terms of the power it should be resolved in favor of the people or the taxpayers who eventually have to pay the bill.

CONCLUSION.

From the foregoing it is the opinion of this department that a board of directors of a public school district are not authorized to spend incidental funds for the purpose of building or repairing public highways.

Respectfully submitted

APPROVED:

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