

SCHOOLS: The entire fund of a school district which has been placed in a "general fund" if any surplus remains at the close of the year, should be distributed according to the original amounts which should have been placed in the various funds under Section 9312, R. S. Mo. 1929.

December 5, 1938

Honorable Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri

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Dear Sir:

This Department is in receipt of your letter of some time ago in which you request an opinion on the following facts:

"Fredericktown, School District, #20, a Town School, during the school year of 1937-38, placed all of the state aid, and income from the county and township funds, the taxation from railroads and public utilities and also the taxes derived from the levy of \$1.00 upon the \$100 valuation of property, in a general fund. There was no distinction between the teachers fund and the incidental fund, all warrants for teachers salary and for incidental expense were drawn on this "General Fund."

"In May 1938, the Board of Education voted to set up a distinct Teachers Fund and an Incidental Fund, and that the taxes derived from the \$1.00 levy per \$100. valuation should be divided on the basis of thirty cents (\$.30) to the teachers fund and seventy cents (\$.70) to the incidental fund. At the close of the fiscal year of the school, it was found that there was

a balance of \$5,481.69 in this 'General Fund.' Can this \$5,481.69 be divided on the basis of the ratio for the year of 1938-39, that is, thirty cents to the teachers fund and seventy cents to the incidental fund?

"The amount derived from the State Aid in 1937-38 was \$12,904.54, and from all other sources that was to be placed in the teachers fund in the sum of \$1,491.54, making a total of \$14,396.54. The total expenditure for teachers salaries for the year of 1937-38 was \$20,000. The total amount to be derived from taxes and which was derived from taxes during the year of 1937-38 was \$12,962.86. Although, there was no distinct teachers and incidental fund in 1937-38 there was a record of the Board of Education showing that of the \$1.00 levied in 1937-38 for teachers and incidental purposes, ten cents was to be applied to the incidental fund and ninety cents to the teachers fund.

"I have been unable to determine an answer to this situation from Sections 9233 and 1311 R. S. Mo. 1929. You will note from the above statistics that the taxes derived from the levy of \$1.00 on the \$100 valuation of 1937-38 was about 43 per cent of the money in the 'General Fund.' Would it be illegal to divide this surplus now on hand according to that ratio of percentage? Section 9311, provides, 'and all moneys not herein specified that now belong to any school district shall be placed to the credit of the "teachers fund" of such school district.' I am unable to determine whether this clause applies to this state of facts.

"Please inform the Board, first, Can this surplus be divided? If so, should it be divided on the basis of the present apportionment of the taxes of seventy per cent to the incidental fund and thirty cents to the teachers fund? If it can be divided or apportioned, should it be done on the basis of the amount of taxes of 1937-38 to the total 'General fund' of that year? "

Briefly, your question is to the effect, should the surplus mentioned in your letter in the amount of \$5,481.69 be divided on the basis of 30% to the teachers' fund and 70% to the incidental fund, using the basis of the division on the amount of taxes for 1937 and 1938?

Section 9233, R. S. Mo. 1929, relates to the application of moneys arising from taxation. Said section provides as follows:

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected; but the income from state, county and township funds shall be applied only to the payment of teachers' warrants, issued by order of the board to legally qualified teachers for services rendered according to law. No county or township treasurer shall honor any warrant against any school district that is in excess of the income and revenue of such school district for the school year beginning on the first day of July and ending on the thirtieth day of June following; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such funds in accordance with section 9257, and no school warrant shall bear interest."

Section 9257, R. S. Mo. 1929, relates to the apportionment of public school fund by the State Superintendent of Schools, but is not quoted for the reason that its contents are not pertinent to the issues involved.

Section 9261, R. S. Mo. 1929, relates to the duties of the county clerk in the assessment of estimates. It contains the following provision:

"Provided, that the levy thus extended shall not exceed in any one year as follows: For building purposes, one per centum in town school districts, and not more than sixty-five cents on the one hundred dollars in other districts; for school purposes, one per centum in town school districts, and not more than sixty-five cents on the one hundred dollars in other districts; for sinking fund, forty cents on the one hundred dollars' valuation, and a sufficient amount to pay interest on bonded indebtedness; all of which shall be extended by the county clerk upon the general tax books of the county for said year in separate columns arranged for that purpose; and the county clerks shall list the names of all persons owning any personal property who do not reside in any school district, and the value thereof; also, list all lands and town lots in any territory not organized into a school district, and shall levy a tax of forty cents on the one hundred dollars' valuation on all such taxable property, said taxes to be collected as other taxes and distributed as provided in section 9257; and it shall be the

duty of the county assessor in listing property to take the number of the school district in which said taxpayer resides at the time of making his list, to be by him marked on said list, and also on the personal assessment book; in columns provided for that purpose."

Section 9312, R. S. Mo. 1929, contains provisions as to the manner in which the treasurer of the school district shall carry or open accounts for the various funds, said section being as follows:

"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:

"Teachers' Fund

"\$ _____ No. _____
Treasurer of _____ county, Missouri:
Pay to _____, or order, for services as teacher in district No. _____, _____ dollars, out of any funds in your hands for the payment of teachers' wages belonging to said district.

Done by order of the board, this _____ day of _____, 19____.
_____, president. _____ clerk.

"Incidental Fund.

"\$ _____ No. _____
Treasurer of _____ county, Missouri:
Pay to _____, or order, the sum of _____, dollars, for _____ furnished district No. _____, out of any funds in your hands for the payment of incidental expenses belonging to said district.

Done by order of the board, this _____ day of _____, 19____.
_____, president. _____ Clerk.

"Building Fund.

"\$ _____ NO. _____
 Treasurer of _____ county, Missouri:
 Pay to _____, or order, the sum
 of _____ dollars, for _____ furnished
 in the erection of a schoolhouse in
 district No. _____, out of any money
 in your hands belonging to the
 building fund of said district, and
 not otherwise appropriated.

Done by order of the board, this
 _____ day of _____, 19____.
 _____, president. _____ clerk.

The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from the taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the 'teachers' fund;' the money derived from taxation for incidental expenses shall be credited to the 'incidental fund;' all money derived from taxation for building purposes, from the sale of school site, schoolhouse or school furniture, from insurance, from sale of bonds, from sinking fund and interest, shall be placed to the credit of the 'building fund;' and all moneys not herein specified that now belong to any school district, or that may hereafter be received by such school district, shall be placed to the credit of the 'teachers' fund' of such school district. No treasurer shall honor any warrant unless it be in the proper form and upon the appropriate fund; and each and every warrant shall be paid from its appropriate fund, and no partial payment shall be made upon

any school warrant, nor shall any interest be paid upon any such warrant: Provided, that the board of directors shall have the power to transfer from the incidental to the building fund such sum as may be necessary for the ordinary repairs of school property: Provided further, that in the event of a balance remaining in the building fund after the purpose for which said fund was levied is accomplished, the said board shall have the power to transfer such unexpended balance to the incidental fund: Provided further, that by a majority vote of the school board tuition fees may be used to liquidate indebtedness accrued in the building fund."

It would appear by the facts as contained in your letter that the district did not follow the terms of Section 9312, supra, in that the moneys received from various sources were not divided and placed in the proper funds but instead in a "general fund." This was irregular but we assume that all outstanding indebtedness for the years in which the "general fund" occurred have been discharged and that no outstanding warrants for prior obligations exist and that no harmful results appear as the irregularity exists in the technical misappropriation of the school funds.

With these preliminary observations, we pursue the question further, viz.: How to allocate the surplus which exists in the various funds. The only logical way that we can determine the same is by following the provisions of Section 9312, quoted supra. It should (1) be determined as to the amount which should have been placed to the credit of the teachers' fund; (2) the amount which should have been placed to the credit of the incidental fund; and (3) the amount which should have been placed to the credit of the building fund, if such fund existed.

Hon. Melvin Englehart

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Dec. 5, 1938

When the above is ascertained the allocation or division or percentage of the surplus fund in the amount of \$5,481.69 should be divided on the basis or percentage of the amounts in the various funds, as should have been determined for the prior year.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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