SCHOOL DISTRICTS:

Directors of school district cannot be compelled to draw warrants where funds are not available, but such fact is not decisive as to district's liability for debt.

June 12, 1933.

Mr. Nat B. Rieger,
Prosecuting Attorney,
Kirksville, Missouri.

Dear Sir:

We are acknowledging receipt of your letter of May 29, 1933, in which you inquire as follows:

> "I respectfully request official opinion upon the following state of facts: The Novinger Consolidated district contracted with its teachers for a definite salary for each teacher with the expectation of receiving enough funds from taxation and state aid to meet the amount contracted for. But the amount of delinquent taxes and the greatly reduced amount of state aid made it impossible for them to pay the teachers in full. Does the Missouri law require the school board to issue warrants on the money provided for in the above statement or has the board the power to withhold warrants? Can the full state guarantee be considered as money provided for?
>
> Thanking you for this favor and ever assuring you of my cooperation, I am."

It is the opinion of this Department that the directors of the district cannot legally be compelled to issue a warrant under the facts stated in your letter, when, at that time, they know there are not any funds available to pay the warrant.

In Jacquemin & Shenker v. Andrews, 40 M. A. 507, a suit was brought by a teacher against the directors individually for issuing a warrant when there were no funds in the treasury to pay the warrant, and the directors knew such fact. The court at page 510 says:

> "We take it, that, while the board of directors were, by the implication of the statute, prohibited from drawing said warrant on the treasury, unless there was money on hand of that fund, out of which it could be paid, still this prohibition must not be construed so as to preclude the directors from anticipating this fund, if the amount of their warrant could subsequently be paid out of any money coming into the county treasury

for that school year, from either or all of the three sources from which that fund, by law, is derieved."

Although that suit was against the directors individually, and not against the district, the court above indicated that the statute prohibited the drawing of warrants when they knew there were no funds in the treasury. The court, however, relieved the directors from individual liability on the theory that they had a right to anticipate that the revenue provided for would be sufficient to pay the warrants.

35 Cyc. 980, provides as follows:

Section d. "A school-district warrant, order, or certificate of indebtedness is merely a mode of reaching money in the treasury of the school-district, to be disbursed under authority of law; and is ordinarily issued for the payment of general school debts and expenses, and under some statutes may be issued for money borrowed to meet such expenses. Such a warrant, order, or certificate, is neither a bill, note, check, nor contract, nor a liquidated and settled account, nor a satisfaction of the indebtedness for which it is given, and, standing alone, it creates no liability against the school district or township."

Under the above rule laid down in Cyc., it is apparent that the legal indebtedness is not created against the district by the mere issue of the warrant. In Tate v. School District No. 11, 23 S. W. (2d), 1013, it is held that the pecuniary liability of the district is created from month to month as the services of the teachers are performed. The warrant is a mere order upon the treasurer which by mandamus he may be compelled to obey, if there are such funds on hand, but we do not believe that the board could be compelled to draw warrants in favor of the teachers when there is no money in the teacher's fund with which to pay the warrants.

However, the fact that the board might not be compelled under such circumstances, to issue a warrant, should not be construed to mean that the teachers might not obtain a judgment against the district for the debt created by reason of the execution of the contract and the performance of services by them.

In Rudy v. School District, 30 M. A. 113, a suit was brought by a school teacher against a school district for the balance of salary due under the contract. The school was closed by reason of the fact that the levy made for school purposes was not sufficient to complete the term of school The court, at page 119, says:

"In support of this defence the defendant invokes the provision of section twelve, article ten, of the constitution of the state. This, so far as material, reads as follows: 'No county, city, town, township, school district, or other political corporation or subdivision of the state, shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.' But the defence here set up fails to show that the revenue "provided for" for the school year in question was not sufficient to pay all the teachers; it merely shows that there was a failure to pay into the school district treasury enough for that purpose. If this is a sound view, then the rights of the teacher, under his contract with the district, may be displaced by the negligence or fraud of the tax collector. If the collector negligently fails to collect the school taxes which are levied, or collects them and fails to turn them over, the directors for this reason may, even upon the brief notice of five days, cancel the contract with the teacher. We are of opinion that this is not the law. Undoubtedly the constitutional provision above quoted is self-enforcing. (Citations omitted). But, in order to make it appear that the contract with the teacher was ultra vires on the part of the directors, it must appear that not enough revenue was "provided" longer to continue the school and not merely that not enough was collected and turned over to the treasurer of the school board."

The rule seems to be that the teacher may recover under his contract for services performed, unless the contract be ultra vires, and to make the contract ultra vires under the aforesaid constitutional provision, it must appear that enough revenue was not "provided for." If sufficient revenue was provided for but not collected, as in the Rudy case above, such fact does not make the contract ultra vires, and the teacher may resort to a suit against the district. We have discussed this question because it seems involved in the inquiry which you made.

According to your inquiry it appears that sufficient revenue was provided for by the directors of the district, and it is our opinion that the portion coming from state aid, as well as other sources, may be considered in arriving as to the amount "provided for."

It is, therefore, the opinion of this Department that the teachers may not compel the board to issue them warrants. The fact, however, that they may not compel the issue of warrants

does not mean that they may not recover under their contract for services performed in a proper proceedings against the district. In other words, whether or not they may have the right to demand the issuance of a warrant, which we do not believe they can do, under the facts stated in your letter, yet, such fact is not relevant in determining whether or not the said teachers may obtain a judgment against the district for the debt created. The debt exists regardless of whether the warrant is issued or not, the warrant being only a method used in discharging the debt.

We have discussed the question of ultimate liability of the district for the reason that it seems to be the ultimate question involved in your inquiry.

Very truly yours,

Assistant Attorney General.

APPROVED:

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Attorney General.

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