SCHOOLS: Common school districts may not pay out of school funds for lunches for pupils who are residents of such common school district who are attending a town school.

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November 25, 1953

Honorable C. P. Turley
Assistant Prosecuting Attorney
Wayne County
Greenville, Missouri

Dear Mr. Turley:

This will be our reply to your letter requesting the opinion of this office whether a common school district which is sending and transporting its pupils to a town school district operating a lunch program, is authorized to pay for the lunches of its pupils from the incidental funds of such common school district. Your letter requesting an opinion reads as follows:

> "The County Superintendent of Schools here has asked that I submit the following question to you for formal opinion:
>
> "District A is a town school with a school lunch program. District B is a common school and is sending and transporting its pupils to the school of District A. District B. wants to know if it is allowed to pay for the lunches of its pupils from the incidental funds of such Dist. B.
>
> "I shall appreciate your early opinion on this, as a former and quite earlier letter on this seems to have been lost."

The authority of the Board of Directors of a school district, applying to all school districts generally in Missouri, to provide lunches for children attending the schools is provided for in Section 165.103, V.A.M.S. 1949,

of the School Laws of this State. That section in that regard reads, in part, as follows:

> "The board of directors, or board of education, shall have the power, in its discretion, to install in the school buildings under its care the necessary apparatus and appliances, and to purchase the necessary food to enable it to provide and sell lunches to children attending the schools; * * *."

We do not find any authority other than as is provided in said Section 165.103, supra, for a Board of School Directors to provide and sell school lunches to such school children at any place other than "in the school buildings under its care."

The question of the extent of the powers of a Board of Directors of a school district was recently construed and defined by our St. Louis Court of Appeals in School District #63, Cape Girardeau vs. Frye, 225 S.W. (2d) 484. The case was a suit by a city school district against a resident of a common school district for tuition because of the attendance at the city district school of defendant's three minor children, residents of the common school district. The defendant resisted the suit on several grounds, one, that the County Superintendent, with the knowledge of the School Board, solicited him to send his children to the city school, advising defendant that there would be no charges for tuition. The Court disallowed this and other defenses and judgment went against him. The defendant appealed the case to the St. Louis Court of Appeals. That Court, on the question of the alleged agreement of the School Board to admit defendant's children without payment of tuition, holding that this could not be done, and defining the powers of school district boards, l.c. 488, said:

> "* * * A board of directors is but a creature of statute, and its members can exercise no authority unless the same is either expressly conferred or else arises by necessary implication

> from the powers that are conferred, State v. Kessler, 136 Mo. App. 236, 240, 117 S.W. 85; Consolidated School Dist. No. 6 v. Shawhan, supra. We have already pointed out that Section 10340 empowers the board to admit pupils not resident within the district and to prescribe the tuition fee which such pupils must pay. The section then goes on to provide that certain classes of children may attend without the payment of tuition; and by thus limiting the privilege to certain definitely specified classes, it necessarily excludes the idea that other nonresident children are entitled to the privilege. * * *."

In the absence of an express statute authorizing a Board of Directors of a school district to provide lunches for pupils at any place other than as provided in the terms of said Section 165.103 under the limited powers of school district boards, as defined in the Frye case, supra, the Board of Directors of the common school district involved in this question would have no authority to provide for the payment for school lunches for the students of said common school district who are transported to and in attendance of the city district school.

We find no statute authorizing the payment by common school districts for lunches for pupils attending approved high schools out of the incidental fund or out of any other fund or in any other way except as is provided in said Section 165.103, supra.

Before a common school district sending pupils to a city district under the authority and for the reasons provided in the statutes hereinabove noted could lawfully pay for lunches for such pupils attending a city school there would have to be in force and effect statutes expressly authorizing the expenditure of the funds of the district for that purpose.

CONCLUSION

Considering the facts recited in your letter and the statute hereinabove cited and quoted applicable to your

Honorable C. P. Turley:

question it is, therefore, the opinion of this office that, in the absence of an express statute authorizing it to do so, a common school district which is sending and transporting its pupils to a town school district with a school lunch program in effect cannot pay from the incidental fund or any other fund from such common school's school funds for the lunches of the resident pupils from such common school district who are attending such town school.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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