

SCHOOLS AND SCHOOL DISTRICTS: Issuing of warrants by a school director.

8-2  
July 28, 1933.



Hon. Nat B. Rieger,  
Prosecuting Attorney,  
Adair County,  
Kirksville, Missouri.

Dear Mr. Rieger:

In your letter of July 8 addressed to General McKittrick you request an opinion in regard to a school director issuing a warrant without proper authority. Your letter is herewith quoted below:

"I would appreciate an official opinion from your department on the question: Can a rural school district recover from a member of the board of directors money paid out of the school district's funds upon the warrant of said director when no meeting of the board of directors has been had and no minutes of any meeting were made or kept as provided by Sec. 9205 R.S. Mo. 1929, the warrant being issued by the clerk at the request of one member of the board, and thereafter cashed. The school district never receiving anything of value for the money so expended.

And too, whether such suit can be brought by a resident taxpaying citizen of the school district to the use of the district in the event the board of directors of said district neglect or refuse to file such suit."

It is noted that you state in your letter above "and no minutes of any meeting were kept as provided by Sec. 9205, R.S. of Mo. 1929". This section deals with the care of property, purchase of materials, etc. We quote below a portion of the statute

which you evidently think pertinent:

"The board of directors or board of education shall have the care and keeping of all property belonging to the district, and shall provide the necessary globes, maps, charts, apparatus, supplementary books, and other material for the use of the school. The board shall keep the schoolhouses and other buildings in good repair, the grounds belonging thereto in good condition, and shall provide fuel, heating apparatus, and other material and appliances necessary for the proper heating, lighting, ventilation and sanitation of the schoolhouses; shall have the floors swept and the fires made at the expense of the district, and cause an accurate account of the expense thereof to be kept and a report of the same to be made at the next annual meeting \*\*\*\*\*"

It is the opinion of this department that no minutes were required under this section, but only that "the clerk shall render an accurate account of all such expenditures at the next annual meeting". The minutes regarding the substance contained in your letter would evidently be covered by Sec. 9289 R.S. of Mo. 1929, which is as follows:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business: provided, each member shall have due notice of the time, place and purpose of such meeting; and in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all the meetings of the board. No member of the board shall receive any compensation for performing the duties of a director."

You state that the warrant in question was issued by the clerk at the request of one member of the board. Sec. 9311, R.S. of Mo. 1929 provides for the manner in which warrants may be drawn, and is 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.\*\*\*"

Sec. 9312 R.S. of Mo. 1929 states that "the warrant thus drawn shall be in the following form and shall be signed by the president of the board and countersigned by the district clerk \*\*\*\*"

Due to the fact that the warrant was cashed, which must have been in regular form, although you have not stated; and the director in question must have been the president of the board; you further state the school district never received anything of value for the money so expended; we are unable to determine from this statement as to whether or not the board member by his actions misappropriated the funds in question, whether he connived with the payee of the check to defraud the school district; or whether the warrant was issued on the theory that it was a valid indebtedness had the warrant been legally issued but in reality the district received no benefit from the money expended. We are inclined to believe that the latter is the construction which we should place on that portion of your letter.

Assuming then that the director gave the warrant for a valid indebtedness, is the warrant a valid one? In the case of School District No. 3, Township 28, etc., Plaintiff in Error, vs. E.C. Smalley, et al, Defendants in Error, 58 Mo. App. 659, the case being short, it is quoted in full:

"This is an action by a school district to recover from one of its directors and the clerk of the school board the amounts of certain school warrants, which had been issued and paid by the county treasurer out of funds belonging to the district. The grounds of recovery relied on are that the warrants were not issued at regular meetings of the board, and that there was no record kept of the action of the board authorizing their issuance.

The evidence introduced and relied on by the plaintiff was to the effect that some of the warrants were ordered to be issued by two members of the school board at meetings called without notice to the other member, and that no record was kept of the proceedings at any of the meetings at which the warrants were authorized to be issued. On the other side the evidence tended to show that all meetings of the school board were held after due notice to each member, and that the warrants in controversy were issued in good faith in payment of valid obligations against the school district. There was a judgment for the defendants, and the plaintiff has brought the case here by writ of error.

The discussion of the plaintiff's assignments of error would be a useless task, for the reason that under no possible theory of the evidence is the plaintiff entitled to a judgment. The contention is that the defendants are personally liable, merely from the fact that the clerk of the district failed to keep a record of the meetings of the school board at which the warrants were ordered to be issued; or, if such meetings were held without notice to all members of the board, then the defendants must be held on that ground. This is a doctrine too harsh for any court of justice to enforce. If these facts had been supplemented by evidence tending to prove a misappropriation of the money of the district, it would have authorized a recovery. But the plaintiff's evidence fails to disclose this. On the contrary, the evidence for the defense is that all the warrants were issued in payment of demands for which the school district was legally liable. The case of Knox County v. Hunolt, 110 Mo. 67, is no authority against our views, but on the contrary supports them. There the county judges knowingly and willfully misappropriated the county school funds by applying them to the payment of ordinary demands against the county. This was in direct violation of the statute governing the subject, and also against the express inhibition of the constitution of the state. The court held such action to be malfeasance in office, for the consequences of which the judges were personally liable. But, in the case before us, there is no pretense that the money belonging to the

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district was misapplied, the contention being merely that there was irregularity in the manner in which the money was withdrawn.

The authorities cited and relied on by the plaintiff would be pertinent, if the plaintiff was defending an action on the warrants themselves. In such a case the holder would be compelled to show that they were issued by order of a majority of the board of directors (R.S. 1889, Sec. 7990), which could only be shown by the record evidence which the statute requires to be kept. (R.S. 1889, Sec. 8012).

With the concurrence of the other judges the judgment of the circuit court will be affirmed. It is so ordered."

This case is further cited and upheld in the Consolidated School District No. 6 of Jackson County v. Shawhan, et al, 273 S.W., l.c. 185.

From the foregoing authorities, it will be noted that if this department has assumed the correct facts, the director would not be personally liable for having issued a warrant, the general rule being that school officers in the absence of fraud, false representation or corrupt motives, are not personally liable.

Since it is the opinion of this department that the director is not personally liable and no action can be brought, the second paragraph of your letter as to whether or not a resident taxpayer can bring suit in the event the directors refuse is not being answered at this time.

If this department is incorrect in its assumption of the facts, we would welcome another letter from you.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY M KITTRICK,  
Attorney General