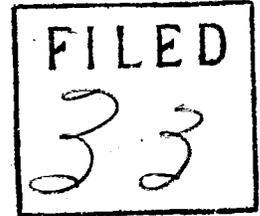


SCHOOLS: School district does not have the power to improve adjacent city streets and this power is given to cities of the fourth class by Section 7197, R. S. Mo. 1939.

September 20, 1946



Honorable Robert L. Gideon
Prosecuting Attorney
Taney County
Forsyth, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date, requesting an opinion from this department, which reads as follows:

"Would you kindly give me an opinion on the following questions?"

"1. Can a school district expend its incidentals fund in blacktopping streets adjacent to the school building. These are city streets and are not the property of the school district.

"2. If a school district is not authorized by law to blacktop or maintain any such street or streets, whose duty is it to do so? This is in a city of the fourth class."

Your letter presents two distinct questions, which will be answered in the order presented.

All monies received by school districts must be used for school purposes as provided by Section 10366, Laws 1943, p. 893, Sec. 1, which reads in part as follows:

"All school moneys received by a school district shall be disbursed only for the

purposes for which they were levied, collected or received. There is hereby created the following funds for the accounting of all school moneys: Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. * * * * *

There is no obligation imposed on school districts for the upkeep of city streets adjacent to their property. Under the above statute all monies are specifically assigned to a certain fund and the purpose for spending the money out of each fund is also well defined. The only possible fund that an obligation of this type could be chargeable to would be the incidental fund. Money credited to this fund must come from revenue derived from taxation for incidental purposes. Therefore, it will be necessary to determine what is meant by incidental expenses. We believe that incidental expenses here refer to the expenses of a school district. A similar situation was decided by the Supreme Court of South Dakota in the case of F. C. Austin Mfg. Co. v. Twin Brooks TP., Grant County, 91 N.W. 471. In this case there was a similar statute that provided for levying taxes to defray the incidental expenses of a town. In limiting the expenditure chargeable to incidental expenses, the court stated, l. c. 472:

"* * * While the term 'incidental' has no clearly defined meaning, it cannot be extended beyond expenses necessarily incident to the ordinary conduct of the town business, and certainly not to expenditures not provided for by taxation, * * * * *"

Therefore, the incidental expenses in our proposition should be used to defray the expenses of a school district and could not be used for improving an adjacent city street, because the school district is not imposed with this duty.

In answer to your second question, I direct your attention to Section 7197, R. S. Mo. 1939, which provides:

"The cities coming under the provisions of this article, in their corporate capa-

cities are authorized and empowered to enact ordinances for the following purposes in addition to the other powers granted by law: First. To levy and collect taxes for general revenue purposes on all mixed, personal and real property within the limits of said city, taxable according to the laws of this state. Second. To open and improve streets, avenues, alleys and other highways, and to make sidewalks and build bridges, culverts, drains and sewers within the city, and to establish grades for all improvements herein mentioned. Such ordinances as may relate to any public work or improvements of any kind shall authorize the particular work to be done or improvements to be made, and shall specify the general character and extent thereof, the material to be used therein and in the alternative, if desirable, and the manner and regulations under which any such public work or improvement shall be executed. Cities of the fourth class shall have and exercise exclusive control over all streets, alleys, avenues and public highways within the limits of such city."

The above quoted statute clearly gives a city of the fourth class power to maintain and to improve streets within the limits of said city.

Conclusion

Therefore, it is the opinion of this department that a school district cannot expend its incidental fund to improve city streets; and, further, that a city of the fourth class has power to maintain and improve streets within the limits of the city.

Respectfully submitted,

APPROVED:

PERSHING WILSON
Assistant Attorney General

J. E. TAYLOR
Attorney General

PW:CP