



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

November 21, 1974

OPINION LETTER NO. 306

Honorable Frank G. Mack
Prosecuting Attorney
Iron County
124 West Russell
Ironton, Missouri 63650

Dear Mr. Mack:

This letter is in response to your question asking:

"1. Is it mandatory that the County Court distribute funds received under the Forest Reserve Act to school districts lying adjacent to National Forest in the County?

"2. If in the affirmative, is there any mandatory formula for distribution of said monies lying adjacent to National Forest in the County?"

You further state that:

"Iron County has four school districts situated in the County, three districts have National Forest land within its boundaries. The fourth district, which is South Iron, has no National Forest wholly or partly within its boundaries, however, the South Iron boundary lies adjacent to approximately 12 miles of National Forest land.

"In the past the County Court has distributed the monies to only three of the districts which had National Forest land within

Honorable Frank G. Mack

its boundaries and the distribution was based upon an acreage formula.

"South Iron School District has made a request and threatened litigation that they are entitled to a portion of the National Forest monies pursuant to Section 12.070 on the basis that: The funds shall be used to aid in maintaining the schools and roads of its school districts that lie or are situated partly or wholly within or adjacent to the National Forest in the County."

Section 12.070, RSMo, to which you refer, provides:

"All sums of money received from the United States under an act of congress, approved May 23, 1908, being an act providing for the payment to the states of twenty-five percent of all money received from the national forest reserves in the states to be expended as the legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated (16 U.S.C.A. §500) shall be expended as follows: Seventy-five percent for the public schools and twenty-five percent for roads in the counties in which national forests are situated. The funds shall be used to aid in maintaining the schools and roads of those school districts that lie or are situated partly or wholly within or adjacent to the national forest in the county. The distribution to each county from the proceeds received on account of a national forest within its boundaries shall be in the proportion that the area of the national forest in the county bears to the total area of the forest in the state, as of June thirtieth of the fiscal year for which the money is received."

In our Opinion No. 77, dated February 4, 1969, to Bergbauer, copy enclosed, this office held that the county court of any county receiving funds from the United States under the National Forest Reserve Act shall distribute such funds to aid in maintaining the

Honorable Frank G. Mack

schools and roads of school districts that lie or are situated partly or wholly within or adjacent to the national forest in the county upon any basis which, in its discretion, the court determines to be proper. We also held in that opinion that Section 12.070 does not require that the county court distribute the money on an acreage basis and that no formula for the distribution of such funds has been prescribed.

The views expressed in Opinion No. 77 are supported by the holding in Trinity Independent School Dist. v. Walker County, 287 S.W.2d 717 (Tex.Civ.App. 1956). In that case the court held that the federal act did not evidence an intention on the part of Congress to make payments in lieu of taxes, but rather a friendly purpose to create trusts for the benefit of counties in which national forests are located in recognition of the national interest in education and road building. We note also that the court held that the Texas statute does not restrict the allocation to school districts containing federal forest land. The same is true here because Section 12.070 clearly provides that "[t]he funds shall be used to aid in maintaining the schools and roads of those school districts that lie or are situated partly or wholly within or adjacent to the national forest in the county."

In a similar situation the United States Supreme Court in King County v. Seattle School District No. 1, 263 U.S. 361, 68 L.Ed 339, 44 S.Ct. 127 (1923), held that the language of the federal act indicates an intention on the part of the Congress that the state in its discretion may prescribe by legislation how the money is to be expended. The court further held that no trust is created on behalf of the school district because of the federal grant and even assuming that such moneys are charged with a trust by the federal law the school district had no right to enforce the trust under federal law.

Regardless of whether a trust is or is not created, the question narrows to whether, in the premises, the adjoining school district has a right to any funds. Section 12.070 with respect to such distribution uses the word "shall" which is generally mandatory but no mandate is given to the county courts respecting a method of distribution. It appears in the premises that it is questionable whether the school district has a legally enforceable claim to any funds. At the same time, as indicated by the United States Supreme Court in the King County case, there is a sacred obligation imposed on the use of such funds. We therefore conclude that Section 12.070 imposes on the county court an

Honorable Frank G. Mack

obligation to make a fair distribution of such funds to such school districts and roads. We assume that the members of the county court as public officers will perform the obligations imposed upon them by law in an appropriate manner.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 77
2/4/69, Bergbauer