

SCHOOL: Debts contracted in excess of anticipated revenue are void; revenue for one year cannot be used to pay debts of subsequent year and treasurer is liable if he pays warrant of prior year out of subsequent years revenue.

December 21, 1938



Honorable N. Elmer Butler
Prosecuting Attorney
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Dear Sir:

This will acknowledge receipt of your letter of December 10, 1938, which reads as follows:

"Will you please give me an opinion on the following:

"There is a common school district in this county, that during the school term of 1937 and 1938 drew warrants for all the anticipated revenue of that school year and for possibly a few dollars more, but part of this money was tied up in a closed bank that was the county depository, and part of it not yet paid in, by reason of the fact that there is still delinquent taxes unpaid.

"The trouble existing is that these warrants drawn on the 1937 and 1938 school year were brought in and paid out of the money, state and otherwise, that was appropriated for this year (1938 and 1939) school year. Who is responsible, if any one, for this money. If the School Board exceeded the revenue for that year, are they responsible?"

We shall consider your last question first in this opinion.

Article 10 Section 12 of the Missouri Constitution provides, "No * * * * school district * * * * of the State shall be allowed to become indebted in any manner or for any pur-

pose to an amount exceeding in any year the income and revenue provided for such year", except of course, the indebtedness on bond issues assented to by a two-third majority of the voters.

In Clarence Sp. School District, Shelby County U. School District No. 67, 107 S. W. 2nd 5 (Mo. Sup.) it is said:

"Under this section (Section 12, Art. 10) * * * * (defendant) might anticipate the revenue collected, and to be collected, for any given year, and contract debts for ordinary current expenses, which would be binding * * * * to the extent of the revenue provided for that year, but not in excess of it." (Our italics) Failure to collect during any year all taxes levied therefor does not invalidate debts which were within the amount levied when contracted."

Following this ruling it is clear any debt contracted by a school district which makes the school districts whole indebtedness exceed the anticipated revenue for that year, is void and not a binding obligation on the school district. In determining the validity of such a debt it is to be remembered that the indebtedness is incurred when the contract is entered into, and not when the warrants are issued. *Trask v. Livingston County*, 210 Mo. 582; See also the *Clarence School District* case, *supra*.

Concerning the liability of the Board of Directors for any debt contracted in excess of the anticipated revenue we will say that our research has disclosed no decided case by the courts of this state which would seem to conclusively settle this question. It appears from the knowledge we have of the facts that any controversy on this point would be one concerning only the holder of a warrant representing indebtedness contracted in excess of anticipated revenue and members of the School Board as private individuals - not as members of the board. The situation being thus it is not our duty to attempt to prejudge these private individuals' private liabilities. However we refer you to some authority

which is indicative of the attitude of the courts on this question. *Jacquemin v. Andrews*, 40 Mo. App. 507; 87 A. L. R. 273 Notes.

The remaining question which you present is: May revenue levied and collected to pay obligation of the 1938 and 1939 school year, be applied to retire obligation contracted in the 1937, 1938 school year, and the responsibility, if any, of those who caused such to be done if it is illegal?

Section 9233 R. S. Mo. 1929, applicable to all classes of schools, provides:

"All moneys arising from taxation shall be paid out only for the purpose for which they were levied and collected; * * * *"

Section 9214 R. S. Mo. 1929, provides:

"The board of directors of each district shall, on or before the fifteenth day of May of each year, forward to the county clerk an estimate of the amount of funds necessary to sustain the schools of their district for the time required by law, * * *."

The "time required by law" appears in Section 9229 R. S. Mo. 1929, where it is provided:

" * * * the school year shall commence on the first day of July and end on the thirtieth day of June following."

and in Section 9195 R. S. Mo. 1929 requiring at least eight months of school during said school year.

Reading the above statutes together it is clear that the law requires all school moneys arising from taxation to be paid out only for the purpose it was collected. That the estimate and levy made by this common school district on May

15, 1938 (for the 1938 and 1939 school year) was to pay obligations for the ensuing school year, that is from July 1, 1938 to June 30, 1939 and that the application of the money thus raised to obligations of the 1937 and 1938 school year (July 1, 1937 to June 30, 1938) is not a use of these funds for the purpose they were collected.

Section 9266 R. S. Mo. 1929 makes the treasurer of each county, not under township organization such as Stone County, the custodian of all moneys for school purposes belonging to the different districts and requires a bond of him conditioned:

"for the faithful disbursement, according to law, of all such money as shall from time to time come into his hands."

In School District No. 45 of Pemiscot Co. v. Correll, 286 S. W. 136 (Mo. App.) the court had occasion to pass upon the liability of the county treasurer under this statute. That suit was one brought by the School District to recover a certain sum wrongfully and illegally paid out of school funds by the treasurer. The facts in the case are somewhat different from the facts here and were as follows: The treasurer had paid out of the school districts funds, money on warrants which were not ordered issued by the school board or signed by the president thereof. This being in violation of Section 11202 R. S. 1919 (now Section 9311). In that case for some reason the treasurer had not entered into the bond required and the court permitted the suit to be maintained in the name of the school district instead of by the county clerk as required under Section 9266, supra, when a bond is given.

We set out these facts so there will be no misconstruction as to the application we are making of what is said in said case, on the instant question. The application of this case, here, lies in the fact that the court held the treasurer liable to the school district for funds illegally paid out by him.

Also it is to be noted that Section 9266, supra, conditions the treasurers' bond for the disbursement of said funds "according to law". In order for the disbursement to

be according to law said money must have been applied to the purpose for which it was collected. This purpose, with reference to the taxes for the 1938 and 1939 school year, was to pay the obligations of that year and not of a prior year. Not being so applied then it was not paid out "according to law" and the treasurer is liable therefor.

Therefore, it is our opinion that debts contracted in excess of the anticipated revenue of a common school district are void and the school district is under no obligation to pay a warrant representing such a debt. That revenue collected to pay the obligations of a particular school year can not be used to pay obligations of a prior school year and if the county treasurer pays a warrant representing a debt contracted for a prior school year out of funds collected to maintain the school in a subsequent school year, he is liable for such illegal disbursement of said money.

We wish to make clear that we are not attempting to decide, by this opinion, whether a surplus of a subsequent year can be applied to debts of prior years, because that is not the question here.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting Attorney-General)

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