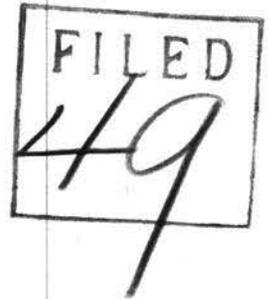


**SCHOOLS:** Under Laws of Missouri, 1939, Section 9233, page 707, when it becomes necessary through lack of funds, tuition can be paid from teachers' fund. (Opinion to Mr. E. S. Trantham, September 9, 1939, overruled.)

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Honorable Lloyd W. King  
State Superintendent  
Department of Public Schools  
Jefferson City, Missouri

Dear Superintendent King:

This Department is in receipt of your inquiry of April 4th relative to a previous ruling of our Department, your inquiry being as follows:

"Inquiry has come to this Department about the proper fund from which the high school tuition may be paid by school districts as provided in Section 16, Laws of 1931, page 343, and as amended in House Bill 319, Laws 1935, page 351.

"In your opinion of September 9, 1939, you ruled that the money in the teachers' fund could not be used for the payment of the high school tuition. Your ruling seems to have been based on the provisions of Section 9233, R. S. 1929. However, since this opinion has been issued, House Bill 337, Revised Laws of 1939, page 707, has taken effect. In substance this amended law combined the provisions of Sections 9233 and 9312 into Section 9233 and made it applicable to all schools

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in the state. Section 9233, R. S. 1929, provided, in part, that certain moneys credited to the teachers' fund shall be applied only to the payment of teachers' warrants. The revised act of 1939 eliminated this restraining clause.

\* \* \* \* \*

"In the light of the changes made in the revised laws of 1939 and the general provisions of the other related laws as indicated herein, would it be legal for school boards to pay the high school tuition from either the teachers' or incidental fund?"

Our opinion of September 9th, 1939, to Mr. E. S. Trantham, Treasurer, Webster County, Marshfield, Missouri, is based on Section 9233, R. S. Mo. 1929, which has been on our statute books for many years. In 1939 the Legislature repealed Sections 9312 and 9233, and enacted in lieu thereof what is now designated as Section 9233. As we recall the opinion to Mr. Trantham, our holding was partially based on the provisions of Section 9312. The two statutes have been combined into one and designated as Section 9233, found in Laws of Missouri, 1939, pages 708-710. Said Section 9233 is as follows:

"All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected. The warrants drawn shall be in the following form, and shall be signed by the president of the board and countersigned by the district clerk:

\* \* \* \* \*

\* \* \* \* \*

"The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the 'teachers' fund', except money apportioned for free text books, which shall be credited to the 'Free Text Book Fund'. Money derived from taxation for sinking fund shall be credited to the sinking fund. Money apportioned for transportation of pupils shall be credited to the incidental fund, and money derived from taxation for annual interest shall be credited to the 'interest fund', the money derived from taxation for incidental expenses shall be credited to the 'incidental fund.' All money derived from taxation or received from the state for building purposes, from sale of school site, schoolhouse or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the 'building fund.' All moneys not herein specified that now belong to any school district, or that may hereafter be received by such school district, shall be placed to the credit of the 'teachers' fund,' of such school district. No treasurer shall honor any warrant unless it be in the proper form,

and upon the appropriate fund; and each and every warrant shall be paid from its appropriate fund, and no partial payment shall be made upon any school warrant, nor shall any interest be paid upon any such warrant: Provided, that the board of directors shall have the power to transfer from the incidental to the building fund such sum as may be necessary for the ordinary repairs of school property: Provided, further, that in the event of a balance remaining in the building fund after the purpose for which said fund was levied is accomplished, the said board shall have the power to transfer such unexpended balance to the incidental fund: Provided, further, that by a majority vote of the school board tuition fees, except state tuition apportionment, may be used to liquidate indebtedness accrued in the building fund. No county or township treasurer shall honor any warrant against any school district that is in excess of the income and revenue of such school district for the school year beginning on the first day of July and ending on the thirtieth day of June following; nor shall any portion of the funds mentioned in this section be applied in payment of any teacher's warrant issued prior to the distribution of such fund in accordance with Section 13, Laws of 1931, page 340, and no school warrant shall bear interest."

Noting that the statute, as formerly, states that all tuition fees shall be placed to the credit of

the teachers' fund, and that it is silent as to transfers from the teachers' fund or incidental fund, we next proceed to determine your question, the gist of which is to the effect as to whether such transfer can be made.

An "incidental fund" by its very designation is a miscellaneous all-purpose fund. And we think that if any excess or if any of its funds are needed to supply deficiencies in the other funds, based on taxation without fraud or sinister purpose, that such funds can be used for payment of highschool tuition.

As to the use of money from the teachers' fund for the payment of high school tuition there appears to be no prohibition in the new section, but as stated before there is no special proviso permitting the same to be done. Hence, we must consult other statutes which bear on the question and attempt to arrive at a conclusion in that manner.

Section 9195, R. S. Mo. 1929, contains the following proviso:

"\* \* \*And, when ratified by a two-thirds vote of the qualified voters of said school district, voting at a special meeting, such arrangements shall be final, and the board will be authorized to issue warrants upon the teachers' fund for payment of tuition, and upon the incidental fund for the payment of cost of transporting pupils."

Section 18, Laws of Missouri, 1931, page 344, which has not been amended but is referred to in Laws of Missouri, 1933, page 388, provides for the assignment of pupils attending an adjoining school which is more accessible, and further provides that the district shall pay the tuition of such pupil or pupils so assigned.

Section 20, Laws of Missouri, 1931, page 346, provides for schools having an average daily attendance

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of less than 15 pupils and permits the payment of transportation and tuition as follows:

"\* \* \*, provided that the total expense, including transportation and tuition paid by the state, shall not exceed the amount that the state would have otherwise paid to such district."

Sections 16 and 16a, as repealed and reenacted by Laws of Missouri, 1935, page 351, and Laws of Missouri, 1933, page 393, place the duty on the board, under certain conditions, to pay tuition of certain pupils after deducting the sum of \$50.00 which is paid by the State. It does not mention from what fund the tuition shall be paid.

In your compiled School Laws of 1938, which you have designated as Section 935ln, page 111, it is noted that "until such time as the school district, not maintaining a high school organized under the regulations of the State Superintendent of Schools has become a part of the consolidated high school district \* \* \*, shall be permitted to attend any public high school in such county for a period not to exceed four years, at the expense of the school district in which said person resides, the tuition for said person to be paid by the debtor school district from the teachers' and incidental funds of said school district."

After consulting all the statutes with reference to payment of tuition and the nature of funds from which it may be paid, and the fact that the statute does not in any instance prohibit the payment of tuition from the teachers' fund, we are of the opinion that when it becomes necessary for school boards to pay the high school tuition from the teachers' fund, such funds may so be used; and for the reason of the changes in Sections 9312 and 9233 as reenacted under the new Section 9233, Laws of Missouri, 1939, page 707, you are directed to disregard

Hon. Lloyd W. King

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our opinion of September 9, 1939, written to Mr. E. S. Trantham, Treasurer, Webster County, Marshfield, Missouri.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General

OWN:EG