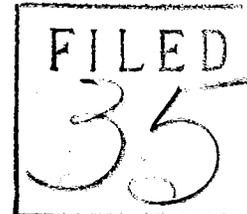


SCHOOLS: Board can levy more than forty cents for a sinking fund if it does not violate the Constitution. Excess in interest fund can be transferred to sinking fund.

4/18  
April 16, 1941

Mr. D. E. Grotjan, Secretary  
Board of Education  
Brunswick Public Schools  
Brunswick, Missouri



Dear Sir:

This Department received your letter of sometime ago, wherein you make the following inquiry:

"At the time our school building was erected about ten years ago, our bond maturities were arranged to be paid off so that a forty cent levy on the valuation of the district would raise sufficient revenue to take care of the bonds as they became due. The valuation of our district since that time, has steadily declined until at the present time our district valuation is only about fifty three percent of the 1931 valuation. As a result of this decline in the valuation the sinking fund levy of forty cents will now raise only approximately two thousand five hundred dollars per year. The outstanding bonds mature at the rate of four thousand dollars per year for the next two years, and then at the rate of five thousand dollars per year. So that the only way the district can retire the bonds as they mature, is to levy more than forty cents sinking fund.

"At the present time there is quite a large surplus accumulated in the interest fund of the district. In order to retire the bonds as they become due, it has been suggested that this surplus be applied to bond retirement. If this was done, would members of the board incur liability, or would the board have the right to so apply funds raised by interest levy to bond retirement?"

"Please write us giving your opinion whether we would be within our legal rights to levy more than forty cents sinking fund, whether it would be legally possible to use interest levy money to retire bonds or whether we will be forced to default on some of the bonds as they become due."

It is assumed that the bonds were originally issued under authority of Section 10328, R. S. Mo. 1939. The provisions for creating a sinking fund and the interest on bonds is contained in Section 10331, R. S. Mo. 1939, as follows:

"The loan authorized by the preceding section shall not be contracted for a longer period than twenty years, and the entire amount of said loan shall at no time exceed, including the present indebtedness of said district, in the aggregate five per cent of the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of said indebtedness, the rate of interest to be agreed upon by the parties, but in no case to exceed the highest legal rate allowed by contract; when effected,

it shall be the duty of the directors to provide for the collection of an annual tax sufficient to pay the interest on said indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within the time said principal shall become due."

It appears that the present rate of taxation does not produce sufficient revenue to retire the principal of the bonds but that you have a surplus in the interest fund. It is a general rule of law that money collected by taxation for specific purposes should not be diverted from one fund to another except according to law and by the proper authority. *Cleveland Village School District v. Zion*, 195 Mo. App. 299.

In the decisions of *Benton v. Scott*, 116 Mo. 378, and *Evans v. West Plains*, 186 Mo. 703, the holdings are that when bonds are legally voted and issued no subsequent assent of the voters is necessary to authorize a tax levy to meet the annual interest and create the sinking fund to pay the principal of such bonds.

In the decision of *Lyons v. School District of Joplin*, 311 Mo. 349, the discretion and judgment as to the amount of the levy necessary for retiring bonds and paying the interest is largely in the hands of the Board of Directors.

Therefore, in the absence of any Constitutional barriers, such as Sections 11 and 12 of Article X of the Constitution, which fact can be determined by computing the total amount of levy that can be assessed, we are of the opinion that the Board may levy more than forty cents for the sinking fund.

As to the question of using the excess interest for the sinking fund, we are of the opinion that to use the same would not constitute diversion of funds from one purpose to another as, under the section the Board is authorized to make a levy for both the sinking fund and interest, and they are treated in the nature of one. We need no authorities to the effect that a bond is a contract between the debtor and creditor wherein the debtor is equally liable for

Mr. D. E. Grotjan

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the principal and interest the same as in the case of a promissory note. Therefore, if there is an excess in the interest fund and the same can be transferred to the sinking fund without jeopardizing the current interest on the bonds we are of the opinion that such transfer may be made.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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