

SCHOOL DISTRICT: May close school and transport pupils of the district to other schools. Funds in hands of Treasurer known as Teachers' Fund may not be invested in Defense Bonds.

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October 12, 1943  
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John  
Honorable John H. Keith  
Prosecuting Attorney  
Iron County  
Ironton, Missouri

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Dear Sir:

This office is in receipt of your recent request for an opinion concerning certain school matters. Omitting caption and signature the text of this request is as follows:

"For four or five years a certain School District in this county, which would be known as a Common School District, has had no school conducted within the district, although there is a school house therein, but they have held annual meetings and have a board of directors composed of three persons.

"The pupils of the district have been transported to another district outside the county, and the expenses of transportation paid by the district. A levy for incidental funds has been made annually, and the expenses of transporting the pupils to the other school have been paid out of this incidental fund, but no levy is made for teachers fund, and now there is a surplus of several hundred dollars.

"May this district continue legally to operate in this way, that is, not have a school conducted in the district, and continue to maintain its organization and have the pupils transported as they have been doing, and may the board of directors invest the surplus funds in defense bonds?"

A closing of schools within the State of Missouri by boards of education is provided for by the Missouri Revised Statutes and it would seem from reading same that in three situations schools may be closed in the state.

In the first instance a school may be closed by a board of education and the question of transportation must be ratified by a two-thirds vote of the qualified voters of the district. Under this arrangement the teachers' fund of the district may be used to defray the tuition costs and the incidental fund to pay the transportation costs of the pupils in the closed school. This section, 10324, R. S. Mo. 1939, reads as follows:

"Whenever any school district in this state, now organized or that may be hereafter organized under the laws of this state, shall fail or refuse, for the period of one year, to provide for an eight months' school in such year, provided a levy of forty cents on the one hundred dollars' valuation, together with the public funds and cash on hand, will enable them to have so long a term, the same shall be deemed to have lapsed as a corporate body, and the territory theretofore embraced within such lapsed district shall be deemed and taken as unorganized territory, and the same, or any portion thereof, may be attached to any adjoining district or districts for school purposes, in the same manner as is now provided in section 10408: Provided, that no school district shall be deemed to have lapsed where the failure to make the needed provision for the eight months of school results from the irregular or void proceedings had for that purpose: Provided, that in any district enumerating fewer than twenty-five children the board may, from year to year, arrange with the board or boards of other district or districts for the admission of all children of school age in said district containing fewer than twenty-five children enumerated, and, if desired, arrange for transporting children

to and from school, 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."

In the second instance in which a school may be closed we find that a state superintendent may cause a school to be closed where he finds that the average attendance in the school is less than fifteen. This is section 10464, R. S. Mo. 1939 and reads as follows:

"If any district in this state shall have an average daily attendance of less than 15 pupils as shown by the records of the last previous school year, the state superintendent shall, in lieu of such state aid, after investigation that convinces him that it would be to the best interests of all concerned, require the board to provide for the transportation of the pupils of such district to other public school or schools, 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."

The third situation in which a school may be closed is the one which calls for a conservation of school expenses and this is Section 10457, R. S. Mo. 1939, which reads as follows:

"Two or more districts may combine temporarily for educational purposes should the school boards of all districts concerned agree to transport the pupils of one or more districts to a schoolhouse elsewhere,

and such districts shall receive the same apportionment from the state school fund as they would otherwise have received, and may use such funds, or any part thereof, in transporting pupils: Provided further, that in such temporary combinations the record of daily attendance of pupils from each district shall be kept separate, and credited to their respective districts, as a basis for future apportionments."

Directing our attention to this question "Can the teachers' fund be invested in defense bonds?" Section 10366, R. S. Mo. 1939, provides: "All moneys arising from taxation shall be paid out only for the purposes for which they were levied and collected. \* \* \*"

Looking now to the decisions in the state, we find authority for this expression "School taxes can only be applied to the purposes for which levied." State ex rel. v. Thompson, 64 Mo. 26 and Rice v. McClellan, 58 Mo. 116.

"The power of the board is limited to that expressed in the statute, and the board is liable for misapplication of the teachers' fund." School district vs. Hawhan, 273 S. W. 182.

#### CONCLUSION

From the above statutes and decisions in this state, it is the opinion of this department that a school may be closed by a board of directors and the pupils of the school transported to other schools upon the payment of tuition and transportation costs; that the determination of the transportation of pupils is a matter to be decided upon either at the annual school meeting or at a public meeting called for that purpose.

We are further of the opinion that the treasurer of a school board may not invest funds in his hands, known as

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"teachers' fund" in defense bonds because money raised by taxation for the payment of teachers' salaries can only be used for the purpose for which the tax was levied originally. It would seem that the high patriotic motive behind the thought of investing a surplus in this fund, however creditable it may be, is not the determining factor in such an instance.

Respectfully submitted,

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APPROVED:

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ROY McKITTRICK  
Attorney-General

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