

BUILDING FUND OF CONSOLIDATED  
SCHOOL DISTRICT:

1. Can Building Fund be transferred to Incidental Fund.
2. If such fund is so transferred, would the County Treasurer be protected, etc., by warrant of Board of Education.

*See op. to Hubbard  
June 30, 1948  
= Same question =*

October 18, 1945



Honorable Joe W. Collins  
Prosecuting Attorney  
Cedar County  
Stockton, Missouri

Dear Sir:

I. Your letter to the Honorable J. E. Taylor, Attorney General of Missouri, Jefferson City, Missouri, which is as follows:

"We have in our county a consolidated school district in which was a number of school buildings, which before the consolidation belonged to other districts.

These buildings were not used for the reason the students attend the consolidated school so they were sold, and the money placed in the building fund.

Would it be legal for the consolidated district to check on this building fund to pay for items ordinarily paid out of the incidental fund?

If the consolidated district would draw a warrant on the building fund, transferring the money received from the sale of these buildings, into the incidental fund would the warrant be sufficient evidence to protect the county treasurer and would the transfer be proper."

has been received and was forwarded to this department for consideration, answer and opinion.

II. Please be advised, -

(A) That Section 10471, R. S. Mo., 1939, provides in part, as follows:

"\* \* \* whenever there is within the district any school property that is no longer required for the use of the district, the board is hereby authorized

to advertise, sell and convey the same, and the proceeds derived therefrom shall be placed to the credit of the building fund of such district."

(B) Section 10366, p. 893, Laws of Missouri, 1943, provides in parts, as follows:

(1)"All school moneys received by a school district shall be disbursed only for the purposes for which they were levied, collected or received. There is hereby created the following funds for the accounting of all school moneys: Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund, and Interest Fund. School district moneys shall be disbursed only through warrants drawn by order of the board of education. Each warrant \* \* shall specify the amount to be paid; \* \* for what purpose \* \* \*. No warrant shall be drawn for the payment of any school district indebtedness unless there is sufficient money \* \* \*."

"The warrants drawn shall be in the following forms."

Here is set out in the section, different warrants for various funds, including the Building Fund, which is as follows:

BUILDING FUND

\$. . . . . No. . . . .

Treasurer of. . . . .County, Missouri:

Pay to. . . . , or order, the sum of. . . dollars, for. . . furnished in the repair, furnishing or erection of a school-house in district No. . . . , out of any moneys in your hands belonging to the building fund of said district.

Done by order of the board, this. . . day of. . . . , 19. . . . ., President. . . . ., Clerk."

(2) " \* \* \* All money derived from taxation or received from the state for the erection of school buildings, from sale of school sites, schoolhouse or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the 'Building Fund'. \* \* \*"

(3) " \* \* \* No treasurer shall honor any warrant unless it be in the proper form, and each and every warrant shall be paid from its appropriate fund, as provided by law. \* \* \*"

(4) " \* \* \* Provided further, 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 after all incidental obligations are paid, the board of directors shall have the power to transfer such portion of the balance remaining in the Incidental Fund to the Teachers' Fund as may be necessary. \* \* \*"

III. (A) In *Crow vs. Consolidated School District No. 7*, 36, S. W. (2nd), 676, the court held, as follows:

(1) "Power of board of consolidated school district to establish schools necessarily carries with it power to abandon other schools no longer required."

(B) In *Corley vs. Montgomery*, 46, S. W. (2nd) 283, the court held, as follows:

(1) "In absence of positive statute to contrary, board of city school district impliedly has discretionary power to discontinue use of any property not being required."

IV. (A) In *Consolidated School Dist. No. 6, of Jackson County vs. Shawhan*, 273 S. W., 182, the court held, as follows:

(1) "Powers of board of directors of school district are limited to those expressly delegated, in respect to application of separate funds, directors are personally liable for misapplication of moneys in teachers' fund to purposes other than payment of teachers."

(2) "Where teachers in school district still have claim against district for part salary, school district is entitled to recover against directors for misappropriation of teachers' fund, although district has never been called on to pay balance."

(3) "Directors of school district are liable for misapplication of teachers' fund to purposes other than payment of teachers, notwithstanding it was done in good faith and without willful intention."

(B) In School District No. 45 of Pemiscot County vs. Correll, 286 S. W., 136, the court held, as follows:

(1) "Action against county treasurer, who has not given bond, required by Rev. St. 1919, Sec. 11188, to recover school district funds, illegally paid out, may be maintained, though no warrant has been drawn, presented, and refused, and though treasurer's term has not expired."

(2) "School district, a body corporate, under Rev. St. 1919, Sec. 11197, has capacity to sue county treasurer to recover school funds illegally paid out."

(3) "Established illegal practice of permitting clerk of school board to sign president's name to warrants held not to estop school district from asserting claim against county treasurer for money illegally paid out on warrants so drawn, in view of Rev. St. 1919, Secs. 11222, 11223."

V. It would seem that the board acted wisely in the selling of the abandoned school property and placing the proceeds of the sale or sales, in the Building Fund of the School District.

VI. From the foregoing quotations of the law and court decisions, I am unable to find any delegated authority, that the School Board has power to transfer Building Fund to any other fund or funds.

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VII. However, it seems from the provisions of the law that it is possible to transfer Incidental Funds to almost any other fund or funds, which is probably why the Legislature did not delegate power to the board to transfer Building Fund to Incidental Fund.

CONCLUSION

VIII. Therefore, it is the opinion of this department that a School Board of a Consolidated School District has no authority to transfer the Building Fund to the Incidental Fund, and if a Board of Education should attempt to do so, the fund would not be transferred, and the County Treasurer paying out Building Fund for any purpose not enumerated in the law, even though allegedly transferred to the Incidental Fund, would constitute an illegal act, and would be liable personally and on his bond, for such misappropriation or conversion.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
Attorney-General

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