

- SCHOOLS: (1)- Senate Bill 162 - reinvestment of certain school funds. Senate Bill 186 - election favoring annual distribution of liquidated funds, such funds credited to the school funds desired by school board.
- (2a)- Threat of epidemic authorizes board to require vaccination before school attendance.
- (2b)--If vaccination rule is adopted, parent not in violation of compulsory school law for not permitting child to be vaccinated.

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Filed No. 32

Honorable A. L. Gates  
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Dear Sir:

Your recent request for an opinion from this department proposes the following questions:

"FIRST: If the voters of this county, accordance with provisions of Senate Bill Numbers 162 and 186 which were passed by the 63rd General Assembly, approve the annual distribution of the capital of the liquidated county and township school funds, to what fund or funds may the treasurer of a school district legally deposit or credit such funds upon receipt of such funds from the county treasurer?"

"SECOND: (a) Does a board of education have the authority to establish a rule that all children must be vaccinated against smallpox before such children are permitted to enroll in and attend school?

"(b) If such authority does exist and such rule is passed by a board of education and parent keeps his child out of school because he does not want such child vaccinated, does such parent violate the compulsory school law?"

Regarding the first question, we shall discuss Senate Bill 162 which became effective November 26, 1945, under an

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emergency clause. That bill provides:

(Section 10376)

"It is hereby made the duty of the several county courts of this state to collect diligently and, when authorized by law, to invest securely the proceeds of all moneys, stocks, bonds and other property belonging to or accruing to the county school fund. On and after the effective date of this act, all real estate loans and investments now belonging to the county school funds, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said school fund of the county shall be reinvested in registered bonds of the United States, or in bonds of the state, or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which is fully guaranteed by the United States Government, and shall be preserved as a county school fund; Provided, that all interest accruing from such reinvestment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other money lawfully coming into said fund, shall hereafter be collected and distributed annually to the schools of the county as hereinafter provided in this article."

(Section 10383)

"On and after the effective date of this act, all real estate loans and investments now belonging to the capital of the school fund of any township, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the

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money then on hand belonging to said capital of township funds, shall be reinvested in registered bonds of the United States, or in bonds of the State, or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which is fully guaranteed by the United States government; Provided, that all interest accruing from such reinvestment of the capital of township school funds and all other moneys lawfully coming into said funds, shall hereafter be collected and distributed annually for the use of schools in any townships or parts of townships in the county as hereinafter provided in this article."

This bill calls for all real estate loans and investments, other than registered bonds of the United States, or bonds of the state, or approved bonds of cities or school districts thereof, or bonds or securities guaranteed by the United States government, to be liquidated by the county court without extension of time upon the maturity thereof and the funds received by such liquidation to be immediately reinvested in one of the securities excepted from liquidation. Of course, this situation is applicable in the event there is no election such as is provided for in Senate Bill 186, which was enacted by the 63d General Assembly and became effective March 26, 1946, under an emergency clause. It is the apparent intention of the Legislature that school funds should be invested only in those securities excepted in Senate Bill 162, in the absence of an annual distribution of the liquidated funds pursuant to an election under Senate Bill 186 requiring the same. Senate Bill 186 provides:

"Section 1. Whenever there shall be presented to the body having in its charge the capital of the county and township school funds of any county or the City of St. Louis a petition,

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signed by qualified electors of said county or the City of St. Louis equal in number to five per cent of the voters casting a ballot in said county or the City of St. Louis for the office of governor at the last preceding general election at which said office was voted upon, praying that the proposal be submitted to the qualified electors for making annual distribution of the capital of the liquidated school fund, such body shall cause an election to be held upon said proposal.

"Section 2. Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor. Notice of such election shall be given by publication in some newspaper of general circulation within the county or City of St. Louis for not more than two weeks, the last insertion to not be longer than one week prior to the date of such election. The proposal shall be submitted on a ballot in substantially the following form:

"For annual distribution of the capital of the liquidated county and township school funds.

"Against annual distribution of the capital of the liquidated county and township school funds.

Said ballot shall carry upon it instructions to the voters to strike out the statement not indicating their preference. The voting shall take place at the regular election precincts in the area wherein such election shall be held, and the judges and clerks thereof shall be selected by the board having authority to make such appointments for general elections. Judges and

clerks shall be the same in number at each election precinct as is provided by law for general elections; and they shall receive the same compensation as may be provided for judges and clerks serving at general elections. The costs incident to such election shall be paid by the county wherein such election is held or by the City of St. Louis. Such special election shall be governed in all respects by the general election laws except wherein such general election laws are in conflict with this article. The results of the balloting at each election precinct shall be certified by the judges of election of such election precinct and attested by the clerks and transmitted to the body having control of the capital of the county and township school funds, which said body shall, from such results so certified and attested, within ten days, determine whether the proposal to distribute annually the liquidated capital of the county and township school funds has received a majority of the votes cast in the county or City of St. Louis wherein such election shall have been held. If the proposal to distribute annually the capital of the liquidated county and township school funds shall receive a majority of the votes cast, the body having control of such county and township school funds shall proceed to thereafter distribute annually such liquidated funds to the school districts. The accumulated balance of such funds shall be apportioned on or before August 31 of each year, until such funds are liquidated and said apportionment shall be based upon the last enumeration on file in the office of the county clerk. Provided, that when the capital of such liquidated county and township funds are distributed to the school districts such funds shall not be counted as a deduction from the minimum guarantee for establishing the equalization quota as defined in Section 10454 of an Act of the 63rd General Assembly, known as Senate Bill 308, approved February 2, 1946." (Underscoring ours.)

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Under this bill there may be an election on the proposition of whether or not the capital of the liquidated county and township school funds should be distributed. If the vote should be in favor of such distribution we must look to Section 10366 as found in the Laws of Missouri, 1943, at page 893, to determine which fund is eligible to receive this distribution. Section 10366 provides in part:

"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 as hereinafter provided. Money apportioned by the state for transportation and money derived from taxation for incidental expenses shall be credited to the 'Incidental Fund'. Money apportioned for free textbooks shall be credited to the 'Free Textbook Fund'. 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'. Money derived from taxation for the retirement of bonds shall be credited to the 'Sinking Fund'. Money derived from taxation for the payment of interest on bonded indebtedness shall be credited to the 'Interest Fund'. Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original expenditures were made. Money donated to the school district shall be placed to the credit of the fund where it can be expended to meet the purpose for

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which it was donated and accepted. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board. 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. No partial payment shall be made upon any school warrant, nor shall any interest be paid upon any such warrant: Provided, that tuition shall be paid from either the Teacher's or Incidental Funds if no part of the minimum guarantee is used for such purposes: Provided further, tuition and transportation costs shall be paid from either the Teachers' or Incidental Funds when the school in any district has been closed on account of temporary combination or low average daily attendance, as provided by law: 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 for the total payment of all contracted obligations to teachers: Provided further that in the event of a balance remaining in the sinking or interest funds, after the total outstanding indebtedness for which said funds were levied is paid, the said board shall have the power to transfer such unexpended balances to the building fund: Provided further, that when any school district has been disincorporated by state or federal agencies, the Treasurer for the school district, when directed by the County Superintendent of Schools, shall use the balances of moneys remaining in any or all funds to pay outstanding obligations of said district and shall transfer the unencumbered balance to the County

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Interest School Moneys for distribution as provided in Section 10390. No county, township, or school district 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 10454, Revised Statutes, 1939." (Underscoring ours.)

There is no particular fund designated as being the recipient of money distributed as the result of an election under Senate Bill 186. Therefore, the applicable portion of Section 10366 is that part which has been underscored by us and the school board may designate the fund or funds to be credited with the liquidated funds so distributed.

With regard to your second question, we believe that the case of State ex rel. O'Bannon v. Cole, 119 S.W. 424, 220 Mo. 697, 22 L. R. A. (N.S.) 986, will suffice. In that case the board of directors of a school district adopted the following order (page 702, Mo.):

"Whereas it has come to the knowledge of the board of education that small-pox exists within the school district; that they deem it necessary that all children attending school, who have not been vaccinated, must be vaccinated within thirty days."

This order was adopted pursuant to authority granted in Sections 9759 and 9764, R. S. Mo. 1899, Those sections are now Sections 10420 and 10340, R. S. Mo. 1939, respectively, and the same authority still exists. Therefore, if the order was proper at that time it would also be proper today.

Under that order two children were excluded from the schools because they had not been so vaccinated, and action was brought by the parent of the children to have them reinstated.

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In deciding in favor of the school board, the Supreme Court of Missouri had this to say in 220 Mo., l. c. 706:

"\* \* \*We have no doubt that in the event of a threatened epidemic of smallpox such boards can pass a rule excluding all pupils who have not been vaccinated. That a person who has never been vaccinated is subject to the contagion of smallpox is general knowledge. That vaccination has reduced the ravages of this disease is also general knowledge. That the appearance of unvaccinated pupils in a public school at a time of a smallpox epidemic, would tend to break up and disorganize a public school, is unquestioned. That the school board has the power to absolutely suspend the school during epidemics of contagious or infectious diseases, we think can hardly be questioned. No court would compel the opening of a school under such circumstances. The power here exercised was a very similar power, and if these rules are reasonable, we see no reason why their enforcement should be prohibited."

In citing the case of *In the Matter of Rebenack*, 62 Mo. App. 8, with approval, the court further said, 220 Mo., l. c. 707:

"In the *Rebenack* case, supra, it is said: 'In the nature of things, it must rest with the boards of education to determine what regulations are needful for a safe and proper management of the schools, and for the physical and moral health of the pupils entrusted to their care. If such regulations are not oppressive or arbitrary, the courts cannot, or should not, interfere.'"

It appears, therefore, that if there is an epidemic or threat of an epidemic then such order is not oppressive or arbitrary and the board would be authorized to adopt the order, otherwise not.

Supposing the order is adopted, you then desire to know whether the parent would violate the compulsory school law if he refused to have his child vaccinated. That situation

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is answered in the same case of State ex rel. O'Bannon v. Cole, 220 Mo., l. c. 711, wherein it is stated:

"One contention of respondent is that by reason of the Compulsory School Act of 1905, Laws of 1905, p. 146, the rules in question would force him to violate that law, and that under that law the rules enforced by the school board are void. This act in no way affects these rules. In the first place there can be no prosecution of a parent for failing to send his child to school under this Act of 1905 until after an officer of the school district has notified him to send such child and then if he fails a prosecution can be had. Respondent is in no danger of violating this law. The act makes it a misdemeanor to violate its provisions and we have yet to hear of a criminal case wherein a defendant was convicted of wilfully violating a law, when in fact he has manifested the disposition that this respondent has to comply with the strict letter of the law. But laying aside all levity, the act of the school board, whose officer must initiate the prosecution by giving notice, would be an absolute defense. Beyond all this, the Act of 1905 must be construed with the Whole body of the school law and when so construed it can be made to harmonize therewith to the end that there would be no violation of the law. The same question is discussed in a way in the Minnesota case, supra, wherein the court uses the language herein above quoted. It will be observed that the court says that all the statutes must be construed together." (Underscoring ours.)

Therefore, the answer to the latter part of your second question is in the negative.

#### CONCLUSION

In the premises, it is the opinion of this department that:

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(1) The real estate loans and other investments in which county school funds, exclusive of the approved investments as provided in Senate Bill 162, are to be liquidated at maturity date without extension thereof and the funds received from such liquidation are to be reinvested in approved investments by the county court, unless an election is held pursuant to Senate Bill 186, and if such election is had and the vote is in favor of annually distributing the capital of the liquidated county and township school funds, the money so distributed will, under Section 10366, Laws of Mo., 1943, p. 893, be credited to the fund or funds designated in the discretion of the school board.

(2) If there is an epidemic or threat of an epidemic of small pox then the school board is authorized to adopt an order requiring all children to be vaccinated against smallpox before they are permitted to enroll in and attend school, otherwise not.

(3) If the school board is authorized to adopt an order requiring pupils to be vaccinated for smallpox before enrollment and attendance at school, the parent who keeps his child out of school because he does not want such child vaccinated, does not violate the compulsory school law.

Respectfully submitted,

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APPROVED:

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