

SCHOOLS:

Money may not be transferred from Building Fund to Incidental Fund.

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Honorable Roger Hibbard
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Hibbard:

This department is in receipt of your request for an official opinion which reads as follows:

"Would your office kindly furnish me an opinion in regard to the following matter:

"Marion County Common School District, No. 4, some thirty years ago experienced a fire which destroyed their only school building. Since that date, no building has ever been erected. There are, at present, only five children in the district, all of whom are being sent to other schools outside the district. There is little likelihood of any building ever being erected, due to the limited population of this district.

"At the time of this fire, the insurance money in the amount of approximately \$500.00 was turned over to the Building Fund for the district and placed in the custody of the County Treasurer. The members of the school board are desirous of withdrawing this money from the Building Fund and placing it in the Incidental Fund so that it might be used to pay the transportation of the pupils, which is their only expense.

"In view of Section 10366, Revised Statutes of Missouri, 1939 and related sections, does the board have authority to do so?"

It is well settled in this state that the power of the board of directors of a school district is limited to those expressed in the statute. Consolidated School District of Jackson County v. Shawhan, 273 S. W. 182.

Section 10366, Laws Missouri 1943, page 893, provides for the various funds in which school district monies shall be placed and further provides under what conditions and for what purposes the monies may be disbursed out of said funds. There is no provision which permits money in the building fund to be transferred to the incidental fund.

Before Section 10366 was amended in 1943 said section provided "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."

It is a well established rule of statutory construction that a statute as amended should be construed on the theory that the lawmakers intended to accomplish something by the amendment. State v. Naylor, 40 S.W.(2d) 1079, 328 Mo. 335; State ex rel. Klein vs. Hughes, 173 S. W.(2d) 877, 351 Mo. 651.

As was said in 59 C.J. 1097, "* * *So a change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended, as where material words contained in the original act are omitted from the amendatory act; * * *."

Therefore, the General Assembly in amending Section 10366 omitted the provision which permitted the board of directors of a school district to transfer money from the building fund to the incidental fund, so it must have intended that such board should no longer have this right and power.

CONCLUSION

It is, therefore, the opinion of this department that the board of directors of a school district which has money in the building fund resulting from the payment of insurance on the school building which has burned down may not transfer such money to the incidental fund even though the district does not intend to erect a new school building.

Respectfully submitted,

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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