

PUBLIC SCHOOLS:

Transfer by Board of
Education of funds
from Interest in Sink-
ing fund to Building
Fund:

) Transfer of interest and sinking fund
) balance is not permitted by section 10366
) R.S.A. Mo. 1939, until both interest and
) principal of indebtedness for payment of
) which such funds were created has been paid
) in its entirety.

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Honorable Hubert Wheeler
Commissioner of Education
State Board of Education
Jefferson City, Missouri

Dear Mr. Wheeler:

This will acknowledge your recent letter in which you request an opinion of this department. Your letter is as follows:

"Each year Boards of Education make an annual financial report to the State Department of Education. These reports are examined by giving consideration to their accuracy, completeness, and the fund accounting of all receipts and expenditures as provided by law. It often becomes necessary to make suggestions to Boards relative to their fund accounting and request that adjustments be made in order that the report may be approved. A difference of opinion has arisen relative to the transfer of moneys from the sinking and interest funds.

Section 10501 provides among other things that the Board of Education shall make and publish annually a detailed report of all receipts and expenditures of school moneys, and a secretary shall forward a copy to the State Board of Education. The State Board of Education is prohibited from releasing state aid to the district until the report has been received in Jefferson City and approved.

Section 10366, as amended in laws of 1943,

page 893, is the general law providing for school fund accounting of all receipts and expenditures for school districts. This law contains the following clause about which the question of transfer has arisen:

"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."

Section 10328 authorizes school boards to borrow money for the purchase of sites, erection of school buildings and the repair and furnishing of buildings when authorized by the voters of the district.

Section 10331 provides that loans shall not be contracted for a longer period than twenty years and shall not exceed an amount in the aggregate of five per centum of the assessed valuation of tangible property. This act further provides that the school board shall levy an annual tax rate, sufficient to pay the interest as it falls due, and also to constitute a sinking fund for the payment of the loan within the time it shall become due.

There are those who interpret the provision of the law relative to the transfer of money from the sinking and interest fund to mean that the Board may make such transfer of surplus funds after the indebtedness each year has been paid. Others hold to the interpretation that this clause means transfers can

only be made after the entire outstanding bond indebtedness has been paid, indicating that all the moneys raised for the sinking and interest fund must be used for meeting the full loan obligations of the district until it has been liquidated.

I shall be glad to have your advice and official opinion in regard to the following question:

1. Does the School Board have the authority to transfer balances remaining in the sinking or interest funds each year after the indebtedness for that year has been paid, or does the provision of the law for transferring such funds permit the transfer only after all outstanding obligations covering the entire loan have been paid."

We have considered the question propounded, together with the attached correspondence, and what we believe to be the applicable statutes. We suggest that the portion of section 10366, R.S.A. Missouri 1939, which reads: "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 * *", shall be construed in the light of the following quoted portion of section 10331, R.S.A. Missouri 1939:

"* * * 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."

As will be seen from the last above quoted language, it is the duty of the school directors to provide for the collection of an annual tax which must be sufficient to raise enough money to do two things; one of them being to pay the interest for the year on the existing school debt, and the other being to provide money to be paid into a sinking fund sufficient to pay the principal of the debt when supplemented by successive annual payments on or before the due date thereof. We are of the opinion that all money provided annually by said tax which is not used for payment of the annual interest must go not into a separate sinking fund for the year of the collection of the tax to be supplemented annually by enough successive separate sinking funds to pay the principal when due, but into a single sinking fund to be added to each successive year sufficiently to make the fund adequate to pay the principal of the school debt on or before the due date thereof.

We are, therefore of the opinion that since there is but one sinking fund increasing annually in amount, the provision of section 10366, supra, to the effect 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 board shall have the power to transfer such unexpended balances to the building fund", is operative only in the event that both the interest and principal of the school debt has been paid to the payee of the debt.

We can not agree with those who hold the view that the tax is levied annually only to pay the annual interest and that fractional part of the principal, which if paid annually, would discharge the indebtedness exactly when due and no earlier. While we concede that the objective of the statute is to provide for such tax as will when paid annually provide the exact amount required to pay the interest annually and the principal at the exact due date, we are of the opinion that the Legislature, when it enacted this law, recognized that no one could so accurately forecast the tax yield of a given rate of taxation as to make it possible to build up a sinking fund that would provide the exact amount needed to pay the indebtedness when due, and no more nor less. We are of the opinion further that the legislature realizing that no such accuracy could be expected, anticipated that the tax rate would be made high

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enough to render it certain that a sinking fund adequate to pay the indebtedness when due would be provided, and anticipated further that this might result in an excess of revenue, or balance in the fund after the payment of the debt, and for that reason, enacted the above quoted provision for the transfer of such balance by the board to the building fund.

CONCLUSION.

We are, therefore, of the opinion that there is no balance transferrable by the school board from the interest or sinking funds until the total indebtedness has been discharged, but that if after paying both the interest and the principal of the indebtedness, there is a balance remaining, the balance may, and must be transferred to the building fund.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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