

SCHOOLS: Under Section 23, Article VI of the  
CONSTITUTIONAL LAW: Constitution, a school district cannot  
make a personal loan to a private  
individual.



September 25, 1951

10-9-51

Honorable Albert L. Hencke  
Prosecuting Attorney  
Franklin County  
Union, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which reads:

"This office desires the opinion of the Attorney General's Department relating to expenditures of funds by Re-organized County School Districts.

"The question is: Does the Board of Education of the re-organized county school district have the authority to make a personal loan to a private individual?

"The Board of Education of a re-organized school district in this county has apparently given a loan in the value of \$1200.00 to a person who drives a school bus for said school district. This Board of Education has taken a mortgage on said bus of said person, and has recorded same.

"This mortgage is recorded as a second mortgage, subsequent to one held by a local bank."

According to the facts which you have set out in your letter it appears that the school board in question has extended a loan to a private individual, and you inquire whether or not the school district is authorized to make such a loan.

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In this connection Section 23, Article VI of the Constitution of Missouri, provides as follows:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

A school district is not specifically mentioned in the above-quoted constitutional provision. However, if it should fall within the category of political corporation or subdivision of the state, we believe that it would be prohibited from lending its credit in the manner which you have described. It, therefore, becomes necessary to ascertain the status of the school district.

In the case of State ex inf. McKittrick vs. Whittle, 63 S.W. (2d) 101, the Supreme Court, in discussing the nature of the school district, said the following at l.c. 102:

"Respondent next contends that a school district is not a political subdivision of the state. The authorities are to the contrary. It is defined by a standard text as follows: 'A school district, or a district board of education or of school trustees, or other local school organization, is a subordinate agency, subdivision, or instrumentality of the state, performing the duties of the state in the conduct and maintenance of the public schools.' 56 C.J. 193.

\* \* \* \* \*

"In City of Edina to use v. School District, 305 Mo. 452, loc. cit. 461, 267 S.W. 112, 115, 36 A.L.R. 1532, we also said: 'Under the Constitution of 1875, the public schools have been intrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function

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and not a special corporate or administrative duty. They are purely public corporations, as has always been held of counties in this state."

Again, in the case of School Dist. of Oakland vs. School Dist. of Joplin, 102 S.W. (2d) 909, the Supreme Court said the following, with reference to school districts, at l.c. 910:

" \* \* \* They are public corporations, form an integral part of the state, and constitute that arm or instrumentality thereof discharging the constitutionally intrusted governmental function of imparting knowledge and intelligence to the youth of the state that the rights and liberties of the people be preserved. \* \* \* They are supported by revenues derived from taxes collected within their respective territorial jurisdictions and the general revenues of the state collected from all parts of the state. These taxes and such property as they may be converted into occupy the legal status of public property and are not the private property of the school district by which they may be held or in which they may be located. \* \* \* "

In the case of Lewis vs. Independent School Dist. of City of Austin, 161 S.W. (2d) 450, the Supreme Court of Texas was construing the constitutional provision of the Texas Constitution similar to the one above quoted from the Missouri Constitution. The court was ascertaining whether or not a school district within the meaning of the constitutional provision was a political corporation or subdivision of the state. At l.c. 452 the court said:

"Section 52, Article 3, of our Constitution, Vernon's Ann. St., declares: 'The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State, to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.'

\* \* \* \* \*

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"That the School District is a political corporation or subdivision of the State, as described in Section 52 of Article 3 of the Constitution, is well established.  
\* \* \*"

In view of the foregoing authorities it is our thought that the school district in question would be considered a political corporation or subdivision of the state within the meaning of Section 23, Article VI of the Missouri Constitution, supra, and the prohibition against lending its credit to a private individual would be applicable.

The question remaining which is well to discuss in this opinion is whether or not the school district in question making the personal loan to a private individual was lending its credit within the meaning of Section 23, Article VI of the Missouri Constitution.

In the case of Limestone County v. Montgomery, 146 So. 607, 87 A.L.R. 166, the Supreme Court of Alabama, in discussing what constituted a violation of a constitutional provision similar to the above-quoted Missouri constitutional provision prohibiting the lending of credit, said at A.L.R. l.c. 167:

" \* \* \* A loan of credit, or grant of money or thing of value in aid of an individual or corporation, in any mode, directly or indirectly, falls within its operation.' The test is whether it is done in good faith for the convenience and safety of the operations of the county. A loan would, we think, be included in the prohibition. \* \* \*"  
(Emphasis ours.)

Again, in the case of Bannock County v. Citizens' Bank & Trust Co., 22 P. (2d) 674, the Supreme Court of Idaho, in construing a provision of the Idaho Constitution prohibiting a county, town, city or other municipal corporation lending or pledging its credit, said the following at l.c. 680:

"In interpreting the sections of the Constitution in question, the language employed must be taken and understood in its natural, ordinary, general, and popular sense. *Busser v. Snyder*, 282 Pa. 440, 128 A. 80, 37 A.L.R. 1515;

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Cooley's Constitutional Limitations (8 Ed.)  
vol. 1, p. 130; 1 Story Const. Sec. 451.  
In the popular sense, lending or loaning  
money or credit is at once understood to  
mean a transaction creating the customary  
relation of borrower and lender, in which  
the money is borrowed for a fixed time, and  
the borrower promises to repay the amount  
borrowed at a stated time in the future,  
with interest at a fixed rate. And that  
is the sense, then, in which the language  
employed in those sections must be under-  
stood, and so understood, no county, for  
example, shall lend or pledge its credit  
or faith, directly or indirectly, or in  
any manner which would create the customary  
relation of borrower and lender. \* \* \*

From the foregoing authorities it is, therefore, apparent  
that for the school district in question to create a borrower  
and lender relationship between itself and a private individual  
would constitute the lending of its credit within the meaning  
of the Missouri constitutional provision and would, therefore,  
be prohibited.

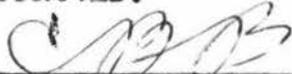
CONCLUSION

In the premises, it is the opinion of this department that  
the board of education of a reorganized school district is pro-  
hibited from extending a personal loan to a private individual.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

RFT:ml