

SCHOOLS: Oral promise made by two of three member school board to pay bonus to teachers invalid and unenforceable.

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Honorable W. H. Pinnell  
Prosecuting Attorney  
Barry County  
Cassville, Missouri

Dear Sir:

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

"I would like your opinion on the following matter:

"Where two members of a three member board in a rural school district, after the start of the school year and after the contract of employment has been signed, orally promise to pay a teacher or teachers a \$200.00 bonus based upon the type of certificate held by the teacher, but where a third member of the board did not concur in this action nor was there any record in the minutes of the school board nor was this promise included in the teacher's contract, is there legal grounds for so paying this sum as bonus and if it were so paid, would the present school directors be legally liable for a misappropriation of public funds?"

Pursuant to a request for additional information, your letter of April 24 was received which states the following facts:

"It is my understanding that there was no official meeting of the Board of Directors when the bonus arrangement was made. It is my further understanding

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that the promise was made after the start of the school year and was made outside of a regular board meeting and in private conversation with the teacher by two members of the three member board."

Regarding the matter of transacting business by the board of directors of a common school district, Section 165.213, R.S. Mo. 1949, provides as follows:

"The directors shall meet within four days after the annual meeting, at some place within the district, and organize by electing one of their number president; and the board shall, on or before the fifteenth day of July, select a clerk, who shall enter upon his duties on the fifteenth day of July, but no compensation shall be allowed such clerk until all reports required by law and by the board have been duly made and filed. A majority of the board shall constitute a quorum for the transaction of business; provided, each member shall have due notice of the time, place and purpose of such meeting; and in case of the absence of the clerk, one of the directors may act temporarily in his place. The clerk shall keep a correct record of the proceedings of all the meetings of the board. No member of the board shall receive any compensation for performing the duties of a director."

The above section has been construed to mean that for transacting any business by the board of directors for and in behalf of the school district, the same has to be accomplished through a legally constituted meeting of said board.

In Johnson v. School District, 67 Mo. 319, the court, in considering the legality of a contract for the purchase of certain school supplies, said at l.c. 321:

"It is clear that the members of the board in transacting business for the district were to do so in meetings of the board. In purchasing maps and

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globes, they could only act when assembled together in a meeting as the board of directors, and neither two nor all of the directors acting separately and apart from each other, could bind the district by any contract they might make. \* \* \*

Again, in the case of State v. Lawrence, 178 Mo. 350, the court was construing Section 9761, R.S. Mo. 1899, which was substantially the same as the above-quoted section of the 1949 Revised Statutes. After quoting the section, the court said at l.c. 373, 374:

"It will thus be seen that the officials of the school district - a body corporate - must conduct the business of the district in an official way, as indicated by the statute.

"To have issued a school warrant, binding upon the district mentioned in this cause, for the purchase of the books sought to be purchased by it, the directors in such transaction would be required to meet as a board, with one of their number as clerk, who is required to keep a correct record of the business of such meeting; then, as a body, make the purchase, order the warrant drawn in conformity to the requirements of the statutes, all of which must be evidenced by the record of the meeting."

Regarding the employment of teachers by the board of directors of a school district, Section 163.080, R.S. Mo. 1949, provides:

"The board shall have power, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages

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per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as a teacher; nor shall any person be employed as a teacher who is related within the fourth degree to any board member, either by consanguinity or affinity, where the vote of such board member is necessary to the selection of such person; nor shall the teacher serve as a clerk of the district. All transactions of the board under this section must be recorded by and filed with the district clerk; provided, that the board of education of any first-class high school may employ a superintendent either before or after the annual school election."

The above section is clear in its meaning in providing a particular procedure to be followed when contracting with a teacher for employment.

From the facts which you have related it definitely does not appear that the statutory requirements were complied with when two members of the school board in question orally promised to pay the bonus to a certain teacher or teachers.

#### CONCLUSION

It is therefore the opinion of this department that an oral promise made by two members of a school board of a common school district, and not at a regular school board meeting, to pay a bonus to a teacher or teachers is invalid, and there would be no legal basis for paying said bonus.

Respectfully submitted,

APPROVED:

  
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J. E. TAYLOR  
Attorney General

RICHARD F. THOMPSON  
Assistant Attorney General

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