

SCHOOLS:

SCHOOL DISTRICTS:

SCHOOL FUNDS:

Funds derived from school lunch program and from school athletic and dramatic funds are school district monies which must be disbursed in accordance with Sec. 165.110, MoRS, Cum. Supp., 1953. If school board uses district funds in purchasing sale of candy and soda, such funds must also be disbursed in the same manner.



September 29, 1954

Honorable H. K. Stumberg  
Prosecuting Attorney  
St. Charles County  
St. Charles, Missouri

Dear Mr. Stumberg:

This is in response to your request for opinion dated August 28, 1954, which reads, in part, as follows:

"In this connection will you please render your official opinion as to whether monies received from school lunch programs, school athletic and dramatic activities, and the sale of candy and soda by the school and which are deposited in the bank as 'Wentzville High School Fund', are monies belonging to the ~~School District~~ and monies which must be disbursed in accordance with Section 165.110 Missouri Revised Statutes 1949."

As a basic premise for the answer to your inquiry, we call attention to that portion of Section 165.110, MoRS, Cum. Supp., 1953, which provides that: "All school moneys received by a school district shall be disbursed only for the purposes for which they were levied, collected or received." That section further provides that: "School district moneys shall be disbursed only through warrants drawn by order of the board of education," and specifies the manner in which such warrants shall be drawn. Therefore, the only real question is whether these particular funds are "school district moneys."

As a general proposition, we believe it safe to say that revenue received by the district, whether derived from taxation, donation, state aid, or as the result of some school activity which is an incidental part of the administration and government of the schools of the district, is properly classified as "school district moneys." In other words, funds which are received or should be received by the school district in its capacity as such must be funded and disbursed in accordance with Section 165.110, supra.

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In connection with the first item mentioned, i. e., monies derived from the school lunch program, we call attention to Section 165.103, RSMo 1949, which authorized the board to provide for the sale of lunches to children. That section reads as follows:

"The board of directors, or board of education, shall have the power, in its discretion, to install in the school buildings under its care, the necessary apparatus and appliances, and to purchase the necessary food to enable it to provide and sell lunches to children attending the schools; provided, however, that such lunches shall not be so sold for a less price than the cost of the food, exclusive of the cost of the necessary apparatus and appliances and exclusive of costs necessary and incidental to the purchase of the food and the preparing and serving of the lunches; provided further, that in cities now having, or which may hereafter have five hundred thousand inhabitants, any surplus fund heretofore or hereafter derived from the sale of such lunches may, in the discretion of the board of education of said city, be used to furnish lunches at less than cost to such public school pupils of compulsory school age as would otherwise be unable by reason of insufficient nutrition, to attend school and to pursue the courses of study prescribed."

There is no express statutory direction as to the fund into which the proceeds derived from the sale of school lunches shall be placed. However, Section 165.110, supra, creates only the following funds: "Teachers' Fund, Incidental Fund, Free Textbook Fund, Building Fund, Sinking Fund and Interest Fund." It has been held by this office in an opinion rendered to Honorable Charles A. Lee under date of January 11, 1935, copy enclosed, that "Since the statute has prescribed the funds which may be set up on the books of the district or its treasurer, it necessarily follows that the school board or treasurer thereof has no legal authority to set up a fund for a purpose not named in any statute."

Section 165.110, supra, makes further directions as to the funds into which revenue derived from certain specified sources shall be placed. It then provides that: "Money received from

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any other source whatsoever shall be placed to the credit of the fund or funds designated by the board." In other words, if the statutes do not provide into what fund certain revenue shall be placed, the fund into which it shall be placed is left to the discretion of the board, but the board is limited to one of the funds created by Section 165.110, supra.

Since the school lunch program is conducted by the school board and in so doing the board is performing a governmental function (Krueger v. Board of Education of St. Louis, 310 Mo. 239, 274 S. W. 811), we believe it is clear that the money derived from and used in the conduct of that program belongs to the school district and must be disbursed as provided in Section 165.110, supra.

Your next inquiry involves funds derived from school athletic and dramatic activities. With regard to such activities, this office held in an opinion directed to Honorable W. H. Pinnell on September 10, 1951, copy enclosed, that "school sponsored athletic events, school plays and entertainments, are 'educational functions and activities'" so as to fall within the exemption clause of the Sales Tax law. From the cases cited in that opinion we take it that athletic and dramatic activities are an integral part of the school curriculum.

Educational activities are a function of the school district, the government and control of which is vested in the board of education (Section 165.317, MoRS, Cum. Supp., 1953). Therefore, we perceive no reason why the funds derived from or expended in the conduct of school sponsored athletic events or dramatic activities which are an incident of the educational program should not be considered the same as other funds of the district and, hence, subject to the control of the board. Being district funds, they can be disbursed only as provided in Section 165.110, supra.

You next refer to "the sale of candy and soda by the school." If the word "school" as used in your letter refers to the school district, and if you mean that the board of education furnishes district funds for the operation of this activity or at least furnished the initial capital therefor from district funds and does in fact receive revenue therefrom, whether or not the board has the authority to engage in such activity, such funds should be handled in the same manner as other funds of the district in accordance with Section 165.110, supra.

On the other hand, of course, if the funds for the operation of this activity were and are derived from some source other than district funds and such activity is not conducted by the board, then they are not district funds over which the board would have control and Section 165.110, supra, would not apply.

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CONCLUSION

It is the opinion of this office that funds received from a school lunch program conducted by the board of education of a school district are funds of the district which must be disbursed in accordance with the provisions of Section 165.110, MoRS, Cum. Supp., 1953.

It is the further opinion of this office that revenue derived from school sponsored athletic and dramatic events are also funds of the school district which must be disbursed in accordance with Section 165.110, supra.

If the board of education uses district funds in the purchase and sale of candy and soda, regardless of whether or not the board has the authority to engage in such activity, it is our further opinion that such funds must be disbursed by the board in accordance with Section 165.110, supra.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

Enclosures (2)

1-11-35 to Hon. Charles A. Lee  
9-10-51 to Mr. W. H. Pinnell

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