

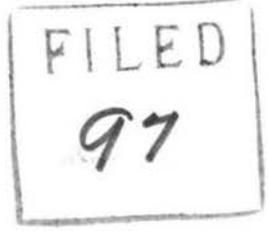
SCHOOLS:  
BONDS:

1. A school board may allocate to debt service for payment of bonds issued by the district part of the \$1.25 which it can levy without voter approval pursuant

to Section 11(b) of Article X, Missouri Constitution; 2. Should a future school board determine that the entire \$1.25 must be allocated to the current operational expenses of the district, this school board must, pursuant to Section 164.161, RSMo 1969, provide for the collection of an annual tax sufficient to pay the interest and principal on the bonds and to retire them within twenty years.

March 15, 1971

OPINION NO. 97



Honorable Edward Stone, Jr.  
State Senator  
Twenty-sixth District  
State Capitol  
Jefferson City, Missouri 65101

Dear Senator Stone:

This is in response to your request for an opinion of this office with respect to the following question:

"The Wentzville R-4 School Board is considering a major bond issue for voter approval during 1971. It is hoped that it can manage the new debt without any increase in the total school tax rate of \$5.43.

"The proposed new debt can be retired by a \$.16 rate. The School Board now levies \$.21 for current building maintenance and \$1.04 for the incidental fund to account for the \$1.25 that the school board may levy without a vote.

"Now I have suggested that \$.16 of the \$.21 building rate be used for debt service. This would leave the total rate set by the board at only \$1.09 instead of the \$1.25.

"The question is whether this Board or some future Board could legally restore the full \$1.25 that it is authorized to levy without a vote of the people."

We interpret the foregoing to pose two questions:

1. May the school board allocate \$.16 of the \$1.25 which it can levy without voter approval to debt service?

Honorable Edward Stone, Jr.

2. If the answer to No. 1 is in the affirmative, could a future school board allocate the entire \$1.25 which it can levy without voter approval to current operations of the school district and increase the debt service levy by 16 cents thereby increasing the total tax rate of the district by 16 cents?

In answer to question No. 1, Section 11(b) of Article X, Missouri Constitution, 1945, provides that for school districts formed of cities and towns a maximum rate of \$1.25 may be levied without voter approval.

"Limitations on local tax rates. Any tax imposed upon such property by municipalities, counties or school districts, for their respective purposes, shall not exceed the following annual rates:

\* \* \* \* \*

"For school districts formed of cities and towns, including the school district of the city of St. Louis -- one dollar and twenty-five cents on the hundred dollars assessed valuation; . . ."

So long as the funds received from the levy provided in Section 11(b) are spent for a legitimate school purpose, the Constitution does not restrict the purposes for which the money may be spent.

Similarly, the statutory provisions applicable to this subject do not determine the manner in which funds received from the levy the board can assess without voter approval shall be allocated. Section 164.011, RSMo 1969, requires that the school board submit each year prior to July 15, an estimate specifying the amount of money needed to be raised by taxation, the rate required to produce such an amount and the funds for which the money is to be used.

"Annual estimate of money required by district and tax rate -- date for filing . . . The school board of each district annually shall prepare an estimate of the amount of money to be raised by taxation for the ensuing school year, and the rate required to produce the amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the ensuing school year, to meet principal and interest payments on the bonded debt of the district, and to provide the funds which have been ordered by the voters of the dis-

Honorable Edward Stone, Jr.

trict for other legitimate district purposes. The school board of each district under the supervision of the county superintendent shall forward the estimate to the county superintendent on or before the fifteenth day of May. The school board in all other districts shall forward the estimate to the county clerk on or before the fifteenth day of July. In school districts divided by county lines the estimate shall be forwarded to the proper officer of each county in which any part of the district lies."

The first subsection of Section 165.011 sets up certain funds into which tax money shall be placed as it is received:

"District funds -- allocation of moneys -- transfers -- tuition paid from what funds. -- 1. The following funds are created for the accounting of all school moneys: Teachers' fund, incidental fund, free textbook fund, building fund, and debt service fund. The treasurer of the county, township or school district shall open an account for each fund specified in this section, and all moneys received from the county school fund, all moneys derived from taxation for teachers' wages, all tuition fees, and not less than eighty percent of the state moneys received under subsections 1, 2 and 3 of section 163.031, RSMo, and all other moneys received from the state except as herein provided, shall be placed to the credit of the teachers' fund. The remainder of the state moneys received under subsections 1, 2 and 3 of section 163.031, RSMo, money apportioned by the state and received from other districts for transportation, and money derived from taxation for incidental expenses shall be credited to the incidental fund. Money apportioned for free textbooks shall be credited to the free textbook fund. All money derived from taxation or received from the state for the erection of buildings or additions thereto and the remodeling or reconstruction of buildings and the furnishing thereof, for the purchase of real estate, or from sale of real estate, schoolhouses or other buildings of any kind, or school furniture, from insurance, from sale of bonds other than refunding bonds, shall be placed to the credit

Honorable Edward Stone, Jr.

of the building fund. Money derived from taxation for the retirement of bonds and the payment of interest thereon shall be credited to the debt service fund. Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original expenditures were made. Money donated to the school districts shall be placed to the credit of the fund where it can be expended to meet the purpose for which it was donated and accepted. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board."

Furthermore, if a school district desires to raise its levy above the rate which can be assessed without voter approval, Sections 164.021 and 164.031 require that the purpose or purposes for the increase must be set forth in the proposal and in the ballots submitted to the electorate.

None of these statutory provisions restrict the power of the school board to allocate to any legitimate school purpose the \$1.25 which it can levy without voter approval. See Attorney General's Opinion No. 64, dated November 6, 1953, to Honorable J. P. Morgan (a copy of which is enclosed herewith).

Should the voters of the Wentzville School District approve the bond issue, the school board would be obligated under Section 164.161 to provide for the collection of an annual tax sufficient to pay the interest and principal of the bonds as they fall due and to retire them within twenty years from the date contracted.

"Restrictions on loans -- bonds of urban districts to be disposed of at ninety-five percent of par value. -- 1. The loans authorized by sections 164.121 to 164.141 shall not be contracted for a longer period than twenty years, and the entire amount of the loans shall at no time exceed, including the present indebtedness of the district, in the aggregate ten percent of the value of taxable tangible property therein as shown by

Honorable Edward Stone, Jr.

the last completed assessment for state and county purposes. The rate of interest upon the bonds shall, in no case, exceed the highest legal rate allowed by contract. Before or at the time of issuing the bonds, the board of directors shall provide for the collection of an annual tax sufficient to pay the interest and principal of the bonds as they fall due, and to retire them within twenty years from date contracted."

If the bonds are approved by the voters and issued, there is no requirement that the amount of the levy sufficient to retire the bonds within twenty years need be submitted to the voters. Section 164.161 and Benton v. Scott, 168 Mo. 378, 68 S.W. 78 (1902).

Therefore, in response to question No. 1, we conclude that if the bonds are approved by the voters and issued, it is the responsibility of the school board to provide for a levy sufficient to retire the bonds within twenty years and that the school board has the discretion to allocate for that purpose part of the \$1.25 which it can levy without voter approval pursuant to Section 11(b) of Article X.

Should the current school board decide to allocate part of the \$1.25 to debt service, thereby not increasing this year's total tax rate for the school district, could a future school board decide on a different allocation of the \$1.25 which would result in an increase in the total tax rate by an amount sufficient to retire the bonds in twenty years? As we have indicated in response to question No. 1, a school board has the discretion to allocate the \$1.25 as it believes advisable. Should a future school board determine that the entire \$1.25 must be allocated to current operational expenses of the school district, thereby deleting the debt service portion of the \$1.25 which the current board had allocated, the future school board would be required to provide for an annual tax sufficient to pay the interest and principal on the bonds. See Section 164.161. Whatever amount is necessary could be levied by that board without voter approval. Section 11(e), Article X, Missouri Constitution; Section 164.161 and Benton v. Scott, supra.

#### CONCLUSION

Therefore, it is the conclusion of this office that:

1. A school board may allocate to debt service for payment of bonds issued by the district part of the \$1.25 which it can levy without voter approval pursuant to Section 11(b) of Article X, Missouri Constitution;

2. Should a future school board determine that the entire \$1.25

Honorable Edward Stone, Jr.

must be allocated to the current operational expenses of the district, this school board must, pursuant to Section 164.161, RSMo 1969, provide for the collection of an annual tax sufficient to pay the interest and principal on the bonds and to retire them within twenty years.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive, flowing style with a large initial "J".

JOHN C. DANFORTH  
Attorney General

Enclosure: Opinion No. 64, November 6, 1953  
Honorable J. P. Morgan