

May 20, 1974

OPINION LETTER NO. 35  
Answer by letter-Klaffenbach

Honorable Maurice Schechter  
State Senator, District 13  
41 Country Fair Lane  
Creve Coeur, Missouri 63141



Dear Senator Schechter:

This letter is in response to your question asking:

"Should the contributions made by the school districts to the teachers retirement system be charged to the 'incidental fund' or the 'teachers fund'?"

In our Opinion No. 78 dated May 31, 1946, to Scantlin, this office held that the employer's contribution to the public school retirement system is to be paid from the school district's incidental fund and not from the teachers' fund. You have that opinion and have questioned its present validity.

While some of the reasoning employed in that opinion may now be somewhat questionable, it remains our view that such employer contributions are to be charged to the incidental fund and not to the teachers' fund.

It is our view that there is a statutory duty placed upon school districts to contribute to the school teachers' retirement system and that this can be enforced by the retirement system itself because of such statutory obligation, Section 169.030(2), RSMo 1973 Supp., but that such employer contributions are not "teachers' wages" or "contracted obligations to teachers" within the meaning of Section 165.011, RSMo.

Honorable Maurice Schechter

We further note that the Scantlin opinion has been followed for almost thirty years during which time there have been no statutory changes which would require a different conclusion and that such administrative interpretations are deemed persuasive by the courts.

In view of the fact that the Supreme Court has held the requirements that such funds not be intermingled is mandatory and may not be violated by school board members, an authorization to charge such contributions against the teachers' fund should, in our view, come from the legislature.

Yours very truly,

JOHN C. DANFORTH  
Attorney General