

SCHOOLS:
SCHOOL DISTRICTS:

The school board may allot to the building fund such percentage of tax moneys received from direct taxation as its judgment dictates, and that, voter approval is not necessary before such moneys are placed into the building fund.



November 6, 1953

Honorable J. P. Morgan
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Morgan:

In your letter of September 15th, 1953, you requested an opinion of this office as follows:

"A reorganized school district in Livingston County, Missouri, submitted a bond issue to the voters at two special elections. The bond issue for the purpose of construction of new buildings was defeated both times. The school is of such classification that the Board may levy a tax of \$1.00 on each \$100.00 assessed valuation without the vote of the people. During the year 1952 the School Board allotted 80¢ of this \$1.00 levy to a building fund and left the remaining 20¢ in the teachers' fund. During the year 1953 the Board allotted 25¢ to the building fund, 50¢ to the teachers' fund and the remaining 25¢ to the incidental fund. During this time they have constructed a new gymnasium annexed to the school building which would certainly be called more than repairs and maintenance.

"Many of the patrons of the district are questioning the right of the Board to appropriate any part of the automatic \$1.00 levy to the building fund. * * *

"I would appreciate your answers to the following questions:

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"1. May a School Board apportion any part of the original school levy to the building fund without a vote of the people?

"2. In the event the School Board can not do this, does the County Court or the Prosecuting Attorney have any responsibility in correcting the same?"

The limit to which a school district can tax in support of schools is set forth by the Constitution of Missouri, 1945, Article X, Section 11(b):

" * * * For school districts formed of cities and towns--one dollar on the hundred dollars assessed valuation, except that in the City of St. Louis the annual rate shall not exceed eighty-nine cents on the hundred dollars assessed valuation;

"For all other school districts--sixty-five cents on the hundred dollars assessed valuation."

According to your letter your district is one in which the assessment may be \$1.00 on the \$100.00 assessed valuation.

The Constitution of Missouri makes provision for enlargement of the above limitation on taxation for school purposes. This provision is made by Section 11(c) of Article X:

"In all municipalities, counties and school districts the rates of taxation as herein limited may be increased for their respective purposes for not to exceed four years, when the rate and purpose of the increase are submitted to a vote and two-thirds of the qualified electors voting thereon shall vote therefor; provided in school districts the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed one year, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor; provided in

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school districts in cities of 75,000 inhabitants or over the rate of taxation as herein limited may be increased for school purposes so that the total levy shall not exceed three times the limit herein specified and not to exceed two years, when the rate period of levy and the purpose of the increase are submitted to a vote and a majority of the qualified electors voting thereon shall vote therefor: Provided, that the rates herein fixed, and the amounts by which they may be increased, may be further limited by law; and provided further, that any county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

It should be here noted that the Constitution does not make any specific provision for the distribution of funds accumulated through taxation in school districts. Therefore, any limitation on the purposes for which such funds may be expended must be found elsewhere.

In order to provide funds for the operation of schools through the school year, provision is made by Section 165.077, whereby an estimate of the amount of money needed to be raised by taxation shall be forwarded to the county superintendent of schools, with the rate required to produce such amount, specifying the funds for which the money is to be used:

"The board of directors of each school district shall, on or before the fifteenth day of May of each year, forward to the county superintendent of schools an estimate of the amount of money to be raised by taxation for the ensuing school year, and the rate required to produce said amount, specifying by funds the amount and rate necessary to sustain the school or schools of the district for the time required by law or authorized by the qualified voters of the district, to meet principal and interest payments on the bonded debt of the district, and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate

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district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

Section 165.110 states the purposes for which school moneys may be spent, and sets up certain types of funds into which moneys received shall go:

"1. All school moneys received by a school district shall be disbursed only for the purposes for which they were levied, collected or received. There are hereby created the following funds for the accounting of all school moneys: Teachers' fund, incidental fund, free textbook fund, building fund, sinking fund, and interest fund. School district moneys shall be disbursed only through warrants drawn by order of the board of education. Each warrant shall show the legal identification of the district by name or by number as provided by law; shall specify the amount to be paid; to whom payment is made; from what fund; for what purpose, the date of the board order, and the number of the warrant. Each warrant must be signed by the president and the secretary or clerk. No warrant shall be drawn for the payment of any school district indebtedness unless there is sufficient money in the treasury and in the proper fund for the payment of said indebtedness.

* * *

"3. The treasurer shall open an account for each fund specified in this section, and all moneys received from the state, county and township funds, and all moneys derived from taxation for teachers' wages, and all tuition fees, shall be placed to the credit of the teachers' fund, except as herein provided. Money apportioned by the state 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 school buildings, from sale of school sites, schoolhouse

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or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the building fund. Money derived from taxation for the retirement of bonds shall be credited to the sinking fund. Money derived from taxation for the payment of interest on bonded indebtedness shall be credited to the interest 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 in the credit of the fund from which the original expenditures were made. Money donated to the school district 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.

"4. * * * provided further, that the board of directors shall have the power to transfer from the incidental to the building fund such sum as may be necessary for the ordinary repairs of school property; provided further, that after all incidental obligations are paid, the board of directors shall have the power to transfer such portion of the balance remaining in the incidental fund to the teachers' fund as may be necessary for the total payment of all contracted obligations to teachers; provided further, that in the event of a balance remaining in the sinking or interest funds, after the total outstanding indebtedness for which said funds were levied is paid, the said board shall have the power to transfer such unexpended balances to the building fund; provided further, that when any school district has lapsed as a corporate body, has become disincorporated, or has been abandoned for more than one year and does not have

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a functioning governing body within the district, the county treasurer, when directed by the county superintendent of schools or the county court, shall use the balances of moneys remaining in any or all funds to pay outstanding obligations of said district and shall transfer the unencumbered balance to the county interest school moneys for distribution as provided in section 161.030, RSMo 1949. * * *

It is necessary to examine the two above-quoted sections to determine whether any part of the \$1.00 assessment may be used or allotted to the building fund. Section 165.077 merely requires an estimate by funds of the amount of money necessary to sustain the schools for the time required by law. That, of course, would be no prohibition against the allotment of some portion of the tax money to the building fund. However, the last clause of the above section reading:

"* * * and to provide such funds as may have been ordered by the qualified voters of the district for other legitimate district purposes, including the purchase of school building sites, buying or erecting school buildings, repairing and furnishing such buildings, and providing foot bridges across running streams."

might lead one to believe that only such funds as have been ordered by the voters may be allotted to the building fund. However, it is believed that the proper interpretation of that particular clause is to make provision for raising moneys that have been allotted by the voters in excess of the Constitutional limitation (this excess to be approved in the manner specified in Article X, Section 11(c), Constitution of Missouri, 1945), and that the enumeration of the purposes for which these excess funds may be spent are not exclusive, but are merely illustrative of the purposes for which voters of any particular school district might be willing to increase the rate of taxation.

In further substantiation of our belief that money raised by taxation of a school district which has not been specifically authorized by approval of the voters may be allotted to the building fund is had in Paragraph 3, Section 165.110 which reads, in part, as follows:

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"* * * All money derived from taxation or received from the state for the erection of school buildings, from sale of school sites, schoolhouse or school furniture, from insurance, from sale of bonds, shall be placed to the credit of the building fund. * * *"

The above quotation speaks of taxation generally and does not restrict such taxes that may be allotted to the building fund to those taxes which have previously been approved by the voters.

In further substantiation, Sub-section 4 of Section 165.110 provides that a balance of the sinking or interest fund may under some circumstances be transferred to the building fund: "provided further, that in the event of a balance remaining in the sinking or interest funds, after the total outstanding indebtedness for which said funds were levied is paid, the said board shall have the power to transfer such unexpended balances to the building fund."

In recapitulation, we find that the Constitution makes provision for taxation for school purposes, that the Legislature has made statutory provision for raising of taxes, and that the Legislature has provided for the placement of tax moneys into certain funds. There is no provision in either the Constitution or the statutes that require a certain percentage of tax moneys to be placed into any particular fund. Apparently, it was intended to leave that to the discretion of the school board. Since there is provision for a building fund, and there is no limitation upon the amount of the tax moneys raised that may be placed in the building fund, we must conclude that the discretion of the school board must be the determining factor.

In view of the answer to your first question it is unnecessary to answer the second question. However, you are referred to State vs. Powell, 221 S.W. (2d) 508 for a discussion of the powers of Prosecuting Attorneys in recovering school moneys illegally expended.

CONCLUSION

It is, therefore, the opinion of this office that a school board may allot to the building fund such percentage of tax moneys

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received which is not allocated to a specific fund by vote of the people, as its judgment dictates, and that voter approval is not necessary before such moneys are placed into the building fund.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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