

SCHOOLS: County treasurer should place 80% of state
SCHOOL FUNDS : school moneys received by him for common school
COUNTY TREASURER: district in teachers' fund upon receipt thereof
and should place remaining 20% in either in-
cidental or teachers' fund when and as directed
by school board.



June 21, 1957

Honorable C. Frank Reeves
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Mr. Reeves:

This is in response to your request for opinion dated
April 29, 1957, which reads as follows:

"Missouri Revised Statute Section 161.045
provides as follows:

**161.045 STATE MONEY HOW DIVIDED BETWEEN
DISTRICT FUNDS**

Not less than eighty percent of the state
school money received under the provisions
of subsections 1, 2 and 3 of section 161.031
shall be placed in the teachers' fund and the
remaining percent of such moneys in the in-
cidental fund.

"Two of the school districts have requested
of the County Treasurer that the 20% of the
funds referred to in above section be
placed in the incidental fund.

"One of these requests ask that the funds
be so divided from the beginning of the
school year the other set no specific date
as to when the funds were to be so divided.

"The County Treasurer needs an opinion from
your office as follows:

(1) Can these funds be divided as per
above section effective the beginning of the
school year even though the request was made
at a later date.

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(2) Would a request that the funds be divided made after the beginning of the school year but not requesting a specific date for the division give the county treasurer authority to divide the state money from a date effective the first of the school year or a date effective from the date of the request."

Inasmuch as your questions involve the county treasurer, it follows that the school districts involved must be common school districts. Section 165.207, RSMo 1949, provides that the government and control of a common school district shall be vested in a board of directors composed of three members. This government and control includes the handling of the finances of the district. Consolidated School Dist. No. 6 vs. Shawhan, Mo. App., 273 SW 182.

Orally, you have informed us that one of the reasons for your opinion request is the fact that the county treasurer had been advised that all state school moneys should be placed in the teachers' fund when received. This advice must have been occasioned by the provisions of Section 165.110(3), RSMo, Cum. Supp. 1955. However, that section has been superseded by Section 161.045, RSMo, Cum. Supp. 1955, which was enacted by the 68th General Assembly in 1955, and which you have quoted in your request.

Because the board has control of the finances of the district, Section 161.045, supra, obviously vests discretion in the board to direct what portion of the 20% of the state moneys received by the district shall be placed in the incidental fund and what portion shall be placed in the teachers' fund. The board has no discretion in regard to 80% of such moneys. Consequently, upon receipt thereof the county treasurer may place the 80% in the teachers' fund immediately. However, he cannot know into which fund he should place the remaining 20% until he receives an order from the board directing him as to how he should apportion it.

If, at the close of the school year, the board has not instructed the county treasurer as to the manner in which it wishes the 20% of state moneys to be apportioned, since not less than the 80% must be placed in the teachers' fund, the county treasurer should place the 20%, i.e., "the remaining per cent of such moneys," in the incidental fund.

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We are unable to see why the effective date of the division of the funds makes any particular difference. There is no requirement in Section 161.045, supra, or elsewhere, that the division and placement of state moneys be made at any particular time. Possibly, the question might arise where warrants were issued in excess of the amount available in either the teachers' fund or the incidental fund prior to a division of the 20% of state moneys already received or anticipated. In such case, the validity of the warrant might be questioned. However, the board may anticipate a fund so that the alteration of the effective date of the division of state moneys between the teachers' fund and the incidental fund would not affect the validity of a warrant in any manner. (See enclosed opinions of Attorney General to George V. Farris dated September 6, 1938, and Haskell Holman dated July 14, 1954.)

CONCLUSION

It is, therefore, the opinion of this office that a county treasurer should place 80% of the state school moneys received by him for a common school district in the teachers' fund of such district immediately upon receipt thereof and should place the remainder of such money in either the teachers' fund or incidental fund of such district when and in the proportion as directed by the board of such district.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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