

SCHOOLS: County common school funds as used in Section 10400, House Bill # 494, means school moneys belonging to various school districts. County treasurer 4th class counties only entitled to salary provided for in Section 13800.4, House Bill No. 781.

February 17, 1947



3/27

Mr. E. S. Trantham  
Treasurer, Webster County  
Marshfield, Missouri

Dear Mr. Trantham:

Your request for an official opinion, the receipt of which was previously acknowledged, reads:

"At the request of the County Court of Webster County they would like an opinion on the meaning of House bill #494,

"In paying for the Treasurers bond does the County common school funds, refer to the Permanent school funds of the County? Also the principal or the interest fund.

"In paying the Treasurers compensation, out of the County treasury mean the County general revenue fund."

Your request presents two questions which involve the interpretation of House Bill No. 494, Section 10400.

Your first inquiry is in regard to the interpretation of the words "county common school funds," out of which the premium for the surety bond, given by the county treasurer, is paid by the county court.

Section 10400 of House Bill No. 494 which was enacted by the 63rd General Assembly provides as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by this chapter, except in counties having adopted the township organization law, in which counties

the township trustee shall be the custodian of all school moneys belonging to the township, and be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; and on his election, before entering upon the duties of his office, he shall give a surety company bond, with sufficient security, in the probable amount of school moneys that shall come into his hands, payable to the State of Missouri, to be approved by the county court, and paid by the county court out of the county common school funds, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over the amount of the security available in the bond; and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury: " Provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."  
(Emphasis ours)

The above section repealed Section 10400, R. S. Mo. 1939, relating to the same subject matter. One of the changes made in the new section was the provision relating to the giving of a bond by the county treasurer. As indicated in the underscored portion of Section 10400, supra, the county treasurer is now required to give a surety bond in the probable amount of school moneys that

shall come into his hands, said bond to be approved and paid by the county court out of the county common school fund. In the old section 10400 the county treasurer was required to give a bond in double the probable amount of school moneys coming into his hands, said bond to be approved by the county court. There was nothing in the old section relating to the method of payment of the bond. Therefore, by passing House Bill No. 494 the Legislature has enacted new matter relating to the giving of a bond by the county treasurer for the purpose of making secure certain school moneys coming into his hands.

Webster County falls within the category of counties of the fourth class, and that portion of Section 10400 of House Bill No. 494, relating to the furnishing of a bond by the county treasurer in fourth class counties provides:

"\* \* \*Provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

Under the above quoted portion of the statute the county treasurer in a fourth class county may furnish either a personal bond or a surety bond, however, if a surety bond is given and is approved by the county court the premium for such bond shall be paid by the county court out of the county common school funds. It has been so held by this department in an opinion submitted December 5, 1946, to Honorable Edwin W. Mills, prosecuting attorney of St. Clair County a county of the fourth class.

Now let us consider the meaning of the words "county common school funds" as they appear in Section 10400 of House Bill No. 494. In construing their meaning we must do so with the purpose in mind to promote the object of the entire statute in which they appear as intended by the Legislature. For it is a primary rule of statutory construction to ascertain the intent of the lawmakers from the language used and to put upon the language its plain and rational meaning in order to promote its object. *Donnelly Garment Co. v. Keitel* (Mo. Sup.) 193 S. W.(2d) 577.

In the first part of Section 10400 of House Bill 494 it is provided that the county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants issued by the order of the Board of Directors (in the case of common school districts), or distributed to the treasurers of town, city or consolidated school districts. Later in the statute it is provided that the treasurer

shall give a bond conditioned for the faithful disbursement of such moneys.

We believe that the school moneys referred to in the statute, which are to be protected by the bond, are only the moneys coming into the hands of the county treasurer that are to be distributed to the various school districts of the county, either by warrant in the case of the common school districts, or by being paid directly to the treasurer of town, city or consolidated school districts. The requirement of the bond to be furnished by the county treasurer is to protect the various school districts from any loss of moneys belonging to them as a result of unfaithful performance of duty by the county treasurer. We therefore believe that in declaring that the bond shall be paid for out of the "county common school funds" the Legislature has intended that it be paid out of the school moneys protected by the giving of the bond, i.e., the moneys coming into the hands of the county treasurer belonging to, and to be distributed to, the various school districts. A superficial interpretation of the words "county common school funds" might indicate that the bond was to be paid for only out of the funds belonging to the common school districts of the county, but such an arrangement would be unreasonable and inequitable and not in harmony with the true legislative intent.

Therefore, in answer to your first question we believe that the "county common school funds" refer to those funds coming into the hands of the county treasurer which belong to, and are to be distributed to, various school districts of the county. The premium for the surety bond should be paid for from amounts withheld from the moneys belonging to each school district in the proportion that the amount belonging to each school district is to the entirety of such moneys coming into the hands of the county treasurer belonging to all of the school districts.

Your second question pertains to the compensation of county treasurers for disbursing school monies as provided in section 10400 of House Bill No. 494, which, in part, reads:

"\* \* \* and the county treasurer shall be allowed such compensation for his services as the county court may deem advisable, not to exceed one-half of one per cent of all school moneys disbursed by him, and to be paid out of the county treasury: \* \* \*"

We inclose a copy of an opinion submitted to Mr. B. E. Ragland, Chief Clerk of the State Auditor's Office, dated March 5, 1947, in which this office held that the county treasurer in counties of the third class is only entitled to his salary as provided for in Section 13800.3 of House Bill No. 780 of the Laws of 1945, and is not entitled to any compensation for disbursing school monies as provided in

Section 10400 of House Bill No. 494.

Your attention is directed to Section 13800.4 of House Bill No. 781, passed by the 63rd General Assembly, which was approved March 7, 1946, and became effective July 1, 1946. This section provides:

"Sec. 13800.4 Counties of fourth class--salary of county treasurer

"The county treasurers in counties of the fourth class of this State shall receive for their services annually, to be paid out of the county treasury in equal monthly installments at the end of each month by a warrant drawn by the county court upon the county treasury, the following sums: In counties having 10,000 inhabitants or less, the sum of \$1,200; in counties having more than 10,000 inhabitants and not more than 12,500, the sum of \$1,500; in counties having more than 12,500 inhabitants and not more than 15,000, the sum of \$1,800; and in counties having more than 15,000 inhabitants, the sum of \$2,200; provided, salaries set out and prescribed in this section shall be in lieu of any other or additional salaries, fees, commissions or emoluments of whatsoever kind for county treasurers in all counties of this state to which this section, by its terms, applies, the provisions of any other statute of this state to the contrary notwithstanding."

House Bill No. 781 in its application to counties of the fourth class is the same as House Bill No. 780 in its application to counties of the third class.

Taking the inclosed opinion and substituting House Bill No. 781 in place of House Bill No. 780, the same conclusion would be reached regarding the compensation of the county treasurer in counties of the fourth class as was concluded in that opinion regarding the compensation of the county treasurer in counties of the third class. Therefore the county treasurer in fourth class counties would only be entitled to his salary as provided for in Section 13800.4 of House Bill No. 781 of the Laws of 1945.

#### CONCLUSION

It is, therefore, the opinion of this department that the words

"county common school funds" as used in Section 10400 of House Bill No. 494, mean those funds coming into the hands of the county treasurer which belong to, and are to be distributed to, the various school districts of the county. The premium for the surety bond furnished by the county treasurer should be paid for by amounts withheld from the moneys belonging to each school district in the proportion that the amount belonging to each school district is to the entirety of such moneys coming into the hands of the county treasurer belonging to all of the school districts.

Further, it is the opinion of this department that the county treasurer in counties of the fourth class is only entitled to his salary as provided for in Section 13800.4 of House Bill No. 781 of the Laws of 1945, and is not entitled to any compensation for disbursing school moneys as provided in Section 10400 of House Bill No. 494, Laws of 1945.

Very truly yours,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

RJS:mw  
Enc.