

APPROPRIATIONS: Deficiency in sum appropriated under Sec. 2.093 of House Bill 448 of the 64th General Assembly to be prorated among all counties of the state.

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Mr. B. H. Howard, Comptroller
Department of Revenue
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"Senate Bill 177, page 504, Senate Bill 178, page 506 and Senate Bill 257, page 509, Laws of 1947 provides that the State shall pay \$600.00 annually to second, third and fourth class counties for partial compensation of the county superintendent of schools for preparing the school budget.

"Senate Bill #256 which became effective July 19, 1948 provides for like payments to counties of the first class.

"Section 2.093, page 27, Appropriation Laws of 1948-49 appropriates \$67,200.00 to cover these annual payments. This is sufficient to pay 112 counties, although, an additional two counties are entitled to a portion of \$600.00, effective July 19, 1948, these two being St. Louis County and Jackson County which were covered by Senate Bill 256.

"We will appreciate an opinion as to whether we should pay each of the 114 counties its proportionate share of the \$67,200.00 appropriated or pay \$600.00 to each of the 112 counties of the second, third and fourth class with the expectation that the legislature will appropriate an additional \$1200.00 to pay St. Louis County and Jackson County."

We have examined Senate Bills 177, 178 and 257 of the 64th General Assembly, referred to in your letter, and find that, in substance, such bills provide for an increase in the salaries of the county superintendents of schools in counties of the second, third and fourth classes, and for the reimbursement by the State of Missouri to the several counties comprising such classes of the sum of \$600.00 per annum for such increases. The first two bills mentioned were approved by the Governor on June 6, 1947, and the last on July 7, 1947. Senate Bill 256 makes the same provision with respect to counties of the first class, but did not become effective until July 19, 1948.

Section 2.093 of House Bill 448 of the 64th General Assembly reads as follows:

"There is hereby appropriated out of the state treasury, chargeable to that part of the general revenue set apart for support of free public schools in Missouri, the sum of Sixty-seven Thousand Two Hundred Dollars (\$67,200.00) to pay the compensation of the county superintendents of schools for the preparation of school district budgets, as provided by law; for the period beginning July 1, 1948 and ending June 30, 1949."

A simple mathematical calculation discloses that the sum appropriated under this bill would serve to reimburse all counties of the second, third and fourth classes, but would be insufficient to reimburse all counties of the state if those of the first class were included.

The question presented, then, is whether such appropriation should be used for reimbursing all of the counties of the state pro rata, thereby allocating a proportionate share of the deficiency to each of the several counties, or whether it should be used to pay in full 112 of the counties.

We wish to observe, at the outset, that no "claims" against the State of Missouri, in the technical sense, will or could arise against the state by virtue of the enactment of the Senate Bills mentioned. No relationship of debtor and creditor has thereby arisen, and for that reason various appellate court decisions, determining the priority of payment of claims or demands out of a particular appropriation when such claims or demands arise through such a debtor and creditor relationship, are of no value in determining your question. The provision for reimbursing represents merely an act of grace on the part of the State of Missouri, and,

the General Assembly having failed to provide a sum adequate to reimburse all of the counties which necessarily are of an equal rank, we believe that equitable principles should be applied and the deficiency prorated among all of the counties of the state.

The intent of the General Assembly is quite clear in that adequate provision has been made for the reimbursement of the counties affected by the first three bills referred to in your letter. However, the same General Assembly has also seen fit, by the latter enactment, to place counties of the first class on a parity with those of the second, third and fourth classes. This, we think, is persuasive toward the view that inasmuch as the General Assembly has recognized no distinction between the various counties in agreeing to reimburse such counties for a portion of the increased salaries granted the county superintendents of schools, that no such distinction should now be made in applying the sum appropriated for that purpose.

Your attention is directed, however, to the fact that Senate Bill 256, referred to, supra, did not become effective until July 19, 1948. This bill affects only two counties, namely, St. Louis and Jackson. In computing the aliquot part of the appropriation apportioned to these two counties, due regard should be given to the fact that the salary increases provided therein will not be effective for the entire current fiscal year.

CONCLUSION

In the premises, we are of the opinion that the appropriation made under Section 2.093 of House Bill 448 of the 64th General Assembly should be prorated among the various counties of the State of Missouri for the purpose of reimbursing such counties for a portion of the increased salaries granted the various county superintendents of schools, subject, however, to pro rata diminution with respect to counties of the first class for the period of the current fiscal year during which such increased salaries were not in effect.

Respectfully submitted,

APPROVED:

WILL F. BERRY, Jr.
Assistant Attorney General

J. E. TAYLOR
Attorney General