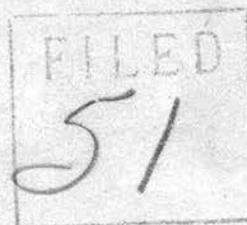


*Copy to Mr. Johnson*  
SCHOOL DISTRICT  
FUNDS:

Four questions, funds, transportation, distribution of funds, school board district liability.

*Chair*  
February 10, 1948



Mr. Howard B. Lang, Jr.  
Prosecuting Attorney  
Columbia, Missouri

Dear Mr. Lang:

Your opinion request received by this office reads as follows:

"An opinion is requested from your office on the following facts:

"Conley School District in this county has voted the minimum levy of sixty-five cents for school purposes. On three other occasions the question of an increased levy has been voted down. The directors of the school district now are faced with the problem concerning both the common school and the transportation and tuition of high school children. The school district maintains its own common school and has contracted with a teacher for an eight-months' school. The funds now on hand and in sight will probably be sufficient to operate the common school, but will not provide anything at all for the transportation or tuition of high school children.

"The transportation setup for high school students is operating on a schedule approved by the Department of Education of this state in compliance with the new law, namely Section 10327, as amended by the last legislature. The amendment by the last legislature is as follows:

"Provided: any cost incurred for transporting such pupils in excess of \$3.00 per month for each pupil transported a distance of 2 miles or more may be collected from the district of the pupils residence, if said cost has been determined in the manner prescribed

by the State Board of Education.'

"The following questions are submitted:

"1. Should all available funds be used first and exhausted if necessary, in continuing the common school, without any contribution to the payment of tuition or transportation of high school students?

"2. What is the obligation of the district to transport and pay tuition of high school students where no funds are available and where the voters have refused a sufficient levy?

"3. Can protested warrants be issued by the directors, if they know at the time that funds are not available, to cover either operation of the common school or transportation and tuition for the high school students and what, if anything is the personal liability of the individual directors for such action if it is taken?

"4. If your opinion is that the high school tuition and transportation must be provided by the district, can the court fix a levy binding on the district to meet this obligation?"

I.

As we understand the facts your school district has and maintains an elementary school. Also, said school district has pupils seeking high school courses, but your district does not have and maintain a high school. Further, we understand that your school district has levied a tax of .65¢ per \$100.00 assessed valuation but refuses to levy at a higher rate. You have not stated the amount of the funds available, so we must turn to the statutes for our rules and analysis. Your first question reads:

"1. Should all available funds be used first, and exhausted if necessary, in continuing the common school, without any contribution to the payment of tuition or transportation of high school students?"

In order to answer your first question it is necessary for us to refer to parts of the Missouri Constitution for 1945, and the statutory provisions of Missouri. In the Constitution of Missouri, Art. IX, Section 1(a) provides that the General Assembly shall maintain free public schools. In part said section provides:

"Free Public Schools--Age Limit--Separate Schools.--A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law."

This provision of the Missouri Constitution has long been held to mean that the Legislature of Missouri was under a duty to create free schools in the State of Missouri, *Roach v. Board etc., of St. Louis Pub. School*, 7 Mo. App. 567. Many statutes have been passed by the Legislature of Missouri in the implementation of this Constitutional mandate, see Chapter 72, Articles 1-28, R. S. Mo. 1939, and Session Acts.

Under Section 10454, R. S. Mo. as amended, Laws of 1945, p. 1703, it is provided, in part:

"The board of directors of each and every school district in this state is hereby empowered and required to maintain the public school or schools of such district for a period of at least eight months in each school year.\* \* \*"

Section 10456, Re-Enacted Laws of 1945, p. 1657, define how a teaching unit is classified. Let us assume that your school district is classified as a one unit elementary teaching unit. What then is the guarantee of the state as to financial assistance?

Section 10454, Laws of 1945, p. 1703, provides:

"\* \* \*In order that each and every district may have the funds necessary to enable the board of directors to maintain the school or schools thereof for such minimum term and to comply with the other requirements of this act, it is hereby provided that when any district has legally levied for school purposes (teacher's wages and

incidental expenses) a tax not less than twenty cents on each one hundred dollars of the assessed valuation of property therein, such districts shall be allotted out of the public school fund of the state an equalization quota to be determined by adding seven hundred and fifty dollars for each elementary teaching unit to which the district is entitled according to the provisions of Section 10456 of this law, one thousand dollars for each high school teaching unit to which the district is entitled according to the provisions of Section 10456 of this law, and the amount approved for resident transportation and then subtracting from the total, which total shall be known as the minimum guarantee of such district, the sum of the following items: The computed yield of a tax of twenty cents on each one hundred dollars (\$100.00) of the assessed valuation of the property of the district, the sum received the preceding year from the county and township school funds, and the sum estimated to be received for the current year for school purposes from the railroad, telegraph, utility and all other taxes based on assessments distributed by the state tax commission.  
\* \* \*

In applying that section to your problem it is apparent that your school district has been guaranteed \$750.00, "and the amount approved for resident transportation." From the total of those two items is subtracted the funds raised by the school district's levy of .65%, its school funds, taxes on railroads, telegraph, utility, and so on as outlined in said statute. In short, the state guarantees \$750.00 as a minimum fund for a one teaching unit elementary school district in the event such school district's levy and tax receipts fail to amount to \$750.00. The existence of this fund is by reason of the school district maintaining a one teaching unit, a fortiori, its use is limited to said one teaching unit, elementary common school. Had the required levy of .20% per \$100.00 assessed valuation plus the tax receipts, (or .65% levy as in your school district) amounted to more than \$750.00 an excess would have resulted, and we believe said excess could be used by the school district for any school purpose.

Briefly, the first \$750.00 raised by the provisions of section 10454, supra, is limited in its application to the elementary

school in your school district. If an excess had existed it could be used for any school purpose, if no excess exists then other provisions of the statute must be considered.

As to the pupils in your school district seeking high school facilities, and as your district maintains no high school, we must consider the following statutes.

Section 10458, Re-enacted Laws of 1945, page 1657, provides:

"The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered; but the rate of tuition paid shall not exceed the per pupil cost of maintaining the school attended, less a deduction at the rate of fifty dollars for the entire term, which deduction shall be added to the equalization quota of the district maintaining the school attended, as calculated for the ensuing year, if said district is entitled to an equalization quota, if the district maintaining the school attended is not entitled to an equalization quota, then such deduction shall be added to the teacher quota of said district, as calculated for the ensuing year, but the attendance of such pupils shall not be counted in determining the teaching units of the school attended; and the cost of maintaining the school attended shall be defined as the amount spent for teachers' wages and incidental purposes. In case of any disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final. Subject to the limitations

of this section, each pupil shall be free to attend the school of his or her choice; but no school shall be required to admit any pupil, or shall any school be denied the right to collect tuition from a pupil, parent, or guardian, if the same is not paid in full as hereinbefore provided. In no case, however, shall the amount collected from a pupil, parent or guardian exceed the difference between fifty dollars and the per pupil amount actually paid by the state, nor shall the amount the district of the pupil's residence is required to pay exceed the amount by which the per pupil cost of maintaining the school attended is greater than fifty dollars. If, for any year, the amount collected from a pupil, parent, or guardian exceed (exceeds) the difference between fifty dollars and the per pupil amount actually paid by the state, the excess shall be refunded as soon as the fact of an overcharge is ascertained.

This section expressly requires the "board of directors of each and every school district in this state" to pay the tuition of a pupil attending high school in another school district where the sending district does not maintain such facilities. Further, "nor shall any school be denied the right to collect tuition from a pupil, parent or guardian, if the same is not paid \* \* \* as hereinbefore provided." The primary obligation is upon the board of directors, even though the pupil, parent or guardian is liable to the statutory extent also: see, Linn Consol. High School Dist. No. 1, vs. Pointer's Creek Public School District, No. 42, Sup. 203 S.W.(2d) 721.

Section 10327, Re-enacted Laws of 1947, page 494, provides:

"When any school district makes provision for transporting any or all of the pupils of such district to a central school or schools within the district, and the method of transporting is approved by the state board of education the amount paid for transportation, not to exceed three (\$3.00) dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district for the ensuing year. When the board of directors of any school district makes provision for transporting the high school pupils whose tuition it is obligated to pay, to the school or schools they are attending and the method of transporting is approved by the state board of

education, the amount paid for transporting such pupils, not to exceed three dollars (\$3.00) per month for each pupil transported shall be a part of the state apportionment to such district for the ensuing year, if no part of the minimum guarantee of such district has been used to pay any part of the cost of transporting such pupils. When the board of directors of a district that admits nonresident pupils to its high school makes provision for transporting such pupils to such high school, and the method of transporting and the transportation routes are approved by the state board of education before the transportation is begun the amount spent for transporting such pupils, not to exceed three (\$3.00) dollars per month for each pupil transported shall be a part of the state apportionment to such district for the ensuing year, if no money apportioned to such district from any public fund or funds has been used to pay any part of the cost of transporting such pupils, except money apportioned to such district to pay the cost of transporting such pupils: Provided, any cost incurred for transporting such pupils in excess of three dollars (\$3.00) per month for each pupil transported may be collected from the district of the pupil's residence, if said cost has been determined in the manner prescribed by the state board of education; and provided further, that for the transportation of pupils attending private schools, between the ages of six and twenty years, where no tuition shall be payable, the costs of transporting said pupils attending private school shall be paid as herein provided for the transportation of pupils to public schools."

The state aid guaranteed by sections 10327 and 10454, supra, relating to transportation costs are part of the minimum guarantee.

In summarizing the above statutes let us briefly review them.

The foregoing sections, namely 10454, 10458 and 10327, supra, are the basic guarantees to all persons not over twenty years of age who are resident of a common school district.

In order that each and every district may have the funds necessary to enable the board of directors to maintain the school or schools for the minimum term and to comply with the other re-

quirements of law the state provides certain aids to supplement the district's local funds.

Each school district in the state is entitled to participate in the distribution of the state school moneys. Section 10454, Laws of 1945, page 1703 prescribes the basis for calculating the amount of school moneys due each school district. Section 10456, Laws of 1945, page 1657 provides that a school district's apportionment guarantees shall be based on teaching units and lists the table for determining apportionment units.

A common school district in which a one teaching unit elementary school is maintained is entitled to a minimum guarantee of at least \$750.00 for school purposes because of such elementary school. Also the district is entitled to additional apportionments for each teaching unit according to the conditions stated in the law, when the state school fund is in excess of the amount required for minimum guarantees and other basic apportionments including tuition, transportation, and other special aids.

Section 10458, supra, provides that the board of directors of the pupil's home district shall pay the tuition cost, less the first \$50.00 which shall be paid by the state. The fifty dollars to be paid by the state is apportioned direct to the receiving district that maintains the high school. The additional cost may be paid by the home district and the board of directors has the authority to pay the tuition. The only restriction here is that no part of the minimum guarantee shall be used for paying tuition for pupils attending high school.

Section 10327, supra, provides that the state shall pay direct to the receiving high school the first \$3.00 of the cost of transporting such pupils when the high school provides the transportation facilities. The additional cost in excess of \$3.00 incurred for transporting non-resident high school pupils may be collected from the district of the pupil's residence as provided by law.

If the common school district maintains a high school then such district is entitled to a thousand dollars for each high school teaching unit which is also made a part of the minimum guarantee. If the school district does not maintain a high school then the district under Section 10458, supra, shall pay the tuition of each and every pupil resident who has completed the highest grade offered in the district who attends an approved high school in another district. This tuition paid by the district is less a deduction of \$50.00 per pupil which is paid by the state to the district which the high school pupils attend.

From the facts presented in your request it appears that the school district in question maintains an elementary school but does not maintain a high school and sends its high school pupils to high schools in other districts. Applying this situation to the law stated above the following procedure should be adopted by the school district.

- (1) The minimum guarantee received for each elementary teaching unit must be spent for the upkeep and education of the elementary pupils.
- (2) When high school pupils are sent to a high school in another district the state pays \$50.00 tuition per pupil and \$3.00 per month per pupil transportation cost which payment is made direct to the receiving district. The sending district is liable for the tuition and transportation costs in excess of these amounts.
- (3) If twenty (.20¢) cents or more is levied which brings in an amount in excess of the minimum guarantee provided for in Section 10456 then such excess may be spent for any school purpose including the costs of tuition and transportation of high school pupils.
- (4) If the district levies the maximum of sixty-five (.65¢) cents and the income is not sufficient to pay the expense of the district and the voters of the district refuse to authorize by vote a levy in excess of the sixty-five (.65¢) cents then the district is still bound to maintain its elementary school and send its high school students to another district. In carrying out this duty the district must follow strictly the requirements set out in paragraphs 1, 2 and 3 above.

II.

Your second question reads as follows:

"2. What is the obligation of the district to transport and pay tuition of high school students where no funds are available and where the voters have refused a sufficient levy?"

In analyzing your question the word "obligation" is to be considered.

Section 10458, Laws of Missouri, 1945, S.B. No. 308, page 1662, provides:

"The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning where work of one or more higher grades is offered; \* \* \*"

Therefore, it is apparent that it is mandatory upon the school district to furnish tuition (and transportation) in accordance with the above quoted statute. What exactly is meant by the part of your question which reads, "where no funds are available and where the voters have refused a sufficient levy" is not clear. In question one, above, it was pointed out that the transportation cost not in excess of three dollars is borne by the state, Section 10327, R. S. No. 1939, and that the cost in excess of three dollars may be collected from the district of the pupil's residence under the same section. There is no question as to the existence of the obligation of a school district to furnish tuition and transportation to pupils, your question conceals a concern as to where the funds are to come from. Keep in mind the conclusion of question one above as to

the minimum guarantee. Section 10327, S. B. #84, as passed by the 64th General Assembly, provides:

"When any school district makes provision for transporting any or all of the pupils of such district to a central school or schools within the district, and the method of transporting is approved by the state board of education the amount paid for transportation, not to exceed three (\$3.00) dollars per month for each pupil transported a distance of two miles or more, shall be a part of the minimum guarantee of such district for the ensuing year. When the board of directors of any school district makes provision for transporting the high school pupils whose tuition it is obligated to pay, to the school or schools they are attending, and the method of transporting is approved by the state board of education, the amount paid for transporting such pupils, not to exceed three dollars (\$3.00) per month for each pupil transported shall be a part of the state apportionment to such district for the ensuing year, if no part of the minimum guarantee of such district has been used to pay any part of the cost of transporting such pupils. \* \* \* \* provided, any cost incurred for transporting such pupils in excess of three dollars (\$3.00) per month for each pupil transported may be collected from the district of the pupil's residence, if said cost has been determined in the manner prescribed by the state board of education; \* \* \* "

The cost of any transportation in excess of three dollars "may be collected from the district of the pupil's residence."

Therefore, we see that under the statutes a school district must provide high school facilities and if it is necessary to transport the pupils in order that he receive such educational facilities the cost is borne by the state and the district in which the pupil resides. The correct solution for your problem would have been for the school district to levy a sufficient tax for this expenditure. However, the other possible solution would be for the transporting school district to seek a judgment against the district of the pupil's residence. That a suit will lie by one school district against another, see Missouri Digest

Vol. 25, Key 112-126. Further, that the Courts of this State will enforce the collection of a valid judgment, see State ex rel. Wood v. Hamilton, 136 S.W. (2d) 699, where the Springfield Court of Appeals held that mandamus was the proper remedy to require school district directors to recommend additional tax levy for payment of judgment against the district.

So in answer to your second question one sees that where there is, as there is in Missouri a statutory duty upon a school district to furnish high school facilities (Section 10458) and pupils do attend another high school, in lieu of one not being furnished by the district of the pupil's residence, the State will pay the cost of transportation not in excess of three dollars (Section 10327) which sum is over and above the minimum guarantee (Section 10454), the district transporting the pupil may collect the cost in excess of three dollars from the district of the pupil's residence (Section 10327) either from funds available or by suit and the collection of a judgment (Wood v. Hamilton, 136 S.W. (2d) 699). The fact that there are no funds available for transportation or the fact that the voters refuse to levy a sufficient tax for such transportation is no defense or relief from the duty to provide the required educational facilities.

### III.

Your third question reads as follows:

"3. Can protested warrants be issued by the directors, if they know at the time that funds are not available, to cover either operation of the common school or transportation and tuition for the high school students and what, if anything, is the personal liability of the individual directors for such action if it is taken?"

The answer to this question is found in Section 10366, R.S. Mo. 1939, where it provides:

"\* \* \* 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 \* \* \*".

As to the personal liability of the directors of a school district should they issue a warrant with the knowledge that no

funds are available we again refer to Section 10366, 1943, page 893, and the interpretations given said statute in Missouri, annotated Statutes, vol. 21, p. 435. The first sentence of said section reads:

"All moneys arising from taxation shall be paid and only for the purposes for which they were levied and collected  
\* \* \*

The powers of the board of directors are limited to those listed in the statute; Conley School District No. 6 of Jackson City v. Shawhan, 273 S. W. 182, Mo. Digest, Vol. 25, key 55 to 63. School warrants can only be issued by the order of the board of directors; Miller v. Alsbaugh, 2 S. W. (2d) 208. In the case of Jacquemin & Shenker v. Andrews, 40 Mo. App. 507, l.c. 510, the Court of Appeals passed on a matter quite similar to the one presented in your third question, l.c. 510, Smith, P.J. wrote:

"\* \* \*We may add that the government of the school district is vested in a board of directors, composed of three members. Their powers and duties are prescribed by statute. For the performance of these duties they receive no salary or compensation. It is a trust reposed in them, the execution of which is oftentimes attended with difficulty and embarrassment; and the question which we have to determine is, whether these officers are personally liable upon the facts stated in the petition, which stands admitted by the demurrer. The allegation is that they caused an order to be drawn on the county treasurer for teacher's wages, when they knew there was then no money in that fund. It is not alleged that there did not afterwards, during that school year, come into the teacher's fund moneys from the state, county or district, out of which said warrant could be paid, so that there was no provision made to meet it. We take it, that, while the board of directors were, by the implication of the statute, prohibited from drawing said warrant on the treasury, unless there was money on hand of that fund out of which it could

be paid, still this prohibition must not be construed so as to preclude the directors from anticipating this fund, if the amount of their warrant could subsequently be paid out of any money coming into the county treasury for that school year, from either or all of the three sources from which that fund, by law, is derived.

"The provisions of the school law must be construed liberally so as to give them a practical effect. \* \* \*"

It should be kept in mind that the above quoted case did not hold the board of school directors liable for a warrant drawn against the proper fund, which fund had been exhausted. However, misapplication of funds is another question, see Consolidated School District No. 6 vs. Shawhan, 273 S. W. 184. Therefore, under the Andrews case, cited supra, if the school board orders a warrant drawn against a fund which they know is exhausted they are not personally liable as long as they cannot be proved to know that the funds may not come into existence. In other words the school board may issue warrants on anticipated funds, but the court did not pass upon the question of the director's liability for a warrant drawn against an exhausted fund where no revenue was anticipated. However, since the Andrews case held that the school directors were not liable personally for a warrant drawn against an exhausted fund, where there was no denial of any anticipated funds it might be concluded that under the Andrews case that if the school directors ordered a warrant drawn against an exhausted fund, fully knowing no funds existed and none were anticipated and in the face of the statute, section 10366, then the school directors would be personally liable for the warrant.

#### IV.

Your fourth and last question reads as follows:

"4. If your opinion is that the high school tuition and transportation must be provided by the district, can the court fix a levy binding on the district to meet this obligation?"

Under the statutes quoted supra, this office is of the opinion that tuition and transportation must be provided by the district of the pupil's residence. Whether or not "the court can fix a levy binding on the district to meet this obligation" turns upon several things. First, the route of transportation must be approved by the State Board of Education, Section 10327, R. S. Mo.

1939. Secondly, the transporting district must be unable to collect from the district of the pupil's residence. Further, a valid judgment must be obtained against the district of the pupil's residence, then under the case of State ex rel. Wood v. Hamilton, 136 S. W.(2d) 699, mandamus will lie to enforce the collection of an additional school levy for payment of the judgment against the district. At local citation 700, the court held:

"It is our conclusions that mandamus is the only available procedure to a judgment creditor, to enable him to collect a judgment under the facts presented here. This court recently held in the case of State ex rel. Hufft v. Knight et al., Mo. App. 121 S. W. (2d) 762, 764, that mandamus 'cannot be employed to control the discretion of one authorized to determine the levy necessary to provide funds necessary for a district. Yet, a school district owes the duty to pay an obligation established by a judgment against it, and its officers are required to take such steps as the Constitution authorizes for the immediate discharge of the liability fixed by the judgment. Its duty to do so results from the plain moral as well as the legal obligation of a municipality or district to pay its debt and no discretion within the legal limitation of the performance of the duty can rightfully be claimed or exercised. \* \* \*The duty of a school district to discharge its obligations, if it can do so by a levy within the limits provided by law, is mandatory upon the district and its directors, and it is mandatory that they certify a levy within the legal limits, sufficient to retire the obligations of the district and mandamus does not interfere with any discretionary powers entrusted to the directors. State ex rel. R. S. Funsten Co. v. Becker et al., Judges of St. Louis Court of Appeals, 318 Mo. 516, 1 S. W. (2d) 103; State ex rel. Kirkwood School District v. Herpel, Mo. App., 32 S.W.(2d) 96.'"

CONCLUSION

This department is of the following opinion:

- A.
- (1). The minimum guarantee received for each

elementary teaching unit must be spent for the upkeep and education of the elementary pupils.

- (2). When high school pupils are sent to a high school in another district the state pays \$50.00 tuition per pupil and \$3.00 per month per pupil transportation cost which payment is made direct to the receiving district. The sending district is liable for the tuition and transportation costs in excess of these amounts.
- (3). If twenty (.20¢) cents or more is levied which brings in an amount in excess of the minimum guarantee provided for in Section 10456 then such excess may be spent for any school purpose including the costs of tuition and transportation of high school pupils.
- (4). If the district levies the maximum of sixty-five (.65¢) cents and the income is not sufficient to pay the expense of the district and the voters of the district refuse to authorize by vote a levy in excess of the sixty-five (.65¢) cents then the district is still bound to maintain its elementary school and send its high school students to another district. In carrying out this duty the district must follow strictly the requirements set out in paragraphs 1, 2 and 3 above.

(B). As there is a statutory duty upon a school district to furnish school facilities (Sec. 10458) and pupils do attend another high school, the State will pay the cost of transportation not in excess of three (\$3.00) dollars which sum is over and above the minimum guarantee (Sec. 10454), and the district transporting the pupils may collect the cost in excess of three (\$3.00) dollars from the district of the pupil's residence.

(C). The directors of the school board may issue warrants on anticipated funds, but are personally liable for warrants drawn against funds where the directors have full knowledge the fund is exhausted and no funds are anticipated.

(D). If a proper judgment is obtained by one school district against another, mandamus will lie to enforce the collection of

Mr. Howard B. Lang, Jr.

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an additional levy for payment of the judgment if said levy is within the amount authorized by the Constitution, sixty-five (.65¢) cents.

Respectfully submitted,

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

J. E. TAYLOR   
Attorney General

WCB:mw