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86-350

September 29, 1986

Charles L. Robinson
Legislative Auditor
Division of Legislative Audit
State Capitol
Little Rock, Arkansas 72201

Dear Mr. Robinson:

This is in response to your opinion request wherein you posed the following inquiries:

1. Can a school district that has not elected to operate with a district treasurer maintain bank accounts for lunchroom funds and school sponsored "activity" funds, such as athletic funds, fees and rentals, or bookstore operations?
2. Can anyone other than the ex officio financial secretary of a school district, designated district treasurer, or school board member sign school sponsored "activity" fund or lunchroom fund checks?

It is the opinion of this Office that the answer to both of your inquiries is no.

In addition to your inquiries, your opinion request contained the following information:

"Activity funds", as commonly used by school administrators, include a broad range of funds. For example, athletic funds, fees and rentals, bookstore operations, school clubs, and class funds may all be categorized as activity funds. The terminology, "activity funds", is confusing at best. A better classification of such funds, consistent with generally accepted accounting principles (GAAP) is that of

governmental, proprietary, or fiduciary funds. See American Institute of Certified Public Accountants, Audit and Accounting Guide, Audits of State and Local Governmental Units (Revised Edition), pp. 12-14 (1986).

Governmental funds are divided into general, special revenues, capital projects, debt service, and special assessment funds. The general fund accounts for all activities except those required to be accounted for in another fund. Revenues in this fund are derived from various sources that usually are not designated for any specific purposes. The revenues are used for general ongoing government services. Special revenue funds generally account for the expenditure of revenues that have been restricted to specific programs or projects.

Fiduciary funds include trust and agency funds. Trust and agency funds account for collection and disbursement of assets held in trust or as an agent by a government for an individual, a group of individuals, or another governmental unit.

When performing an audit, the Division of Legislative Audit must classify these "activity funds" as governmental or fiduciary funds for presentation of financial statements in accordance with generally accepted accounting principles. Currently, the Division of Legislative Audit categorizes athletic funds, fees and rental, bookstore operations, and vending operations as governmental funds. School clubs and class funds are generally classified as fiduciary funds.

In F. E. Compton & Company v. Greenwood School District No. 25, 203 Ark. 935, 159 S.W.2d 721 (1942), supplies were purchased with the understanding that payment should be made out of the "School Activity Fund". The court recognized the "School Activity Fund" as a fund created by the students in the schools of the district, by producing plays and other forms of entertainment and collecting therefor small admission charges, over which the school board exercised no supervision or control. An example is the senior or junior class play. The play is not sponsored by the school, but by the class. The

proceeds from the play belong to the class, who exercises complete control over disbursement of the funds. However, books and records for the class may be maintained by the school as a fiduciary fund.

In contrast, athletic funds are derived from school sponsored athletic events. The funds belong to the school and the use of such funds is subject to the control of the school administration and/or board.

In classifying "activity funds" as either governmental or fiduciary, the touchstone for such decision is the source, use, and ownership of the funds involved. If a school class, club or other entity, which is independent of school control, owns the funds, then the school acts merely as the custodian for such funds. If, however, the school exercises control over, or is responsible for the source of funds, such as athletic events, then the true nature of the funds would be governmental in nature and should be accounted for in compliance with Arkansas law relating to the school funds.

Pertinent to your inquiries are the following statutory provisions:

Act 269 of 1943, as codified at Ark. Stat. Ann. §§ 80-521 - 80-527 (Repl. 1980), provides for the appointment of school district treasurers. Some of the duties of the school district treasurers are to receive and disburse funds of the school district and to keep records of all financial transactions of the school district on forms approved by the State Department of Education and the Division of Local Audits of the Division of Legislative Audit.

Section 11 of Act 34 of the First Extraordinary Session of 1983 [Ark. Stat. Ann. §80-850.20 (Supp. 1985)] requires school districts to maintain proper financial records in accordance with the State's school accounting manual and regulations promulgated by the State Board of Education.

Ark. Stat. Ann. §80-524 (Repl. 1980) requires all taxes and revenues of a school district to be turned over to the County Treasurer. If the school has a district treasurer, the County Treasurer must immediately pay over such funds to the appropriate school district treasurer. If the school does not have a district treasurer, the funds are retained by the County Treasurer who disburses the funds in accordance with State law.

Ark. Stat. Ann. §80-1303(d) (Supp. 1985) establishes the funds required to be established by a County Treasurer for each school district in his county. The County Treasurer is required to credit to the operating fund all other revenues not earmarked for teachers' salaries, building fund, debt service fund or sinking fund.

Ark. Stat. Ann. §80-1304(a) (Repl. 1980) provides that for those districts for which the County Supervisor does not serve as ex officio financial secretary (as provided in Act 327 of 1941) it shall be the duty of the Superintendent of Schools of the district to serve as ex officio financial secretary and to issue and countersign all warrants. For those districts for which the County Supervisor serves as ex officio financial secretary he shall also issue and countersign all warrants. Provided, however, that upon request of the Board of Directors of any other school district administered in the county the County Board of Education shall authorize the County Supervisor to serve as ex officio financial secretary of the district. Provided further that any local school board by resolution adopted by majority vote may designate the ex officio financial secretary as the disbursing officer of the district and no additional signature shall be required on warrants. Such resolution must be filed with the County Board of Education and the County Treasurer. No warrants shall be valid without the signature of the ex officio financial secretary.

Ark. Stat. Ann. §§ 80-521 - 80-527 (Repl. 1980) establishes that disbursement of funds by a school district treasurer are to be made only upon warrants

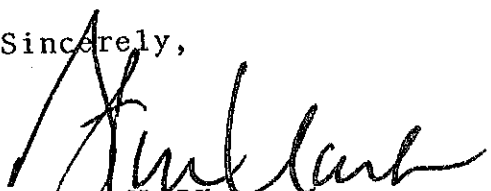
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signed by the President and Secretary of the school board and countersigned by the Superintendent of Schools of the district.

Based on the foregoing, it is clear that when a school district operates without a district treasurer, the county treasurer is limited to the types of funds that he can set up for a school district. These funds do not cover the funds to which you have referred. Furthermore, the referenced statutory provisions limit the officials who can properly draw on the accounts in question.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General C. Randy McNair III.

Sincerely,



STEVE CLARK
Attorney General

JSC:CRM:jk