

School Money, Transfer Of. School Districts, Railroad Mileage In. School Districts, Suits By and Against.

Where money has been erroneously paid by a wrong school district the only officers who have authority to transfer such money to the rightful districts are the trustees of the district erroneously receiving same. If the transfer of such money is refused the district entitled to the money may institute a civil suit to collect the same. It is the duty of the county commissioners to apportion railroad mileage to the various school districts of the county.

Helena, Montana, August 12, 1908.

Hon. J. W. Speer,
County Attorney,
Great Falls, Montana.

Dear Sir:—

Your letter of the 8th inst. received, requesting an opinion upon the following questions:

“Can money which should have been paid to one school district but which through error or mistake was wrongfully or erroneously paid to another school district be rectified and an equal amount of money transferred from the district so receiving the same to the proper district and if so whose duty is it to make such correction or transfer? If no officer is authorized to make such transfer or correction can the district entitled to said money maintain a civil action against the district receiving the same for the recovery thereof? In case the transfer of said money cannot be made can the railroad company be assessed for back taxes for the railroad mileage lying in the district and for which said district has not received the taxes for last year even though said railroad company paid taxes on the mileage in said district but which money was placed to the credit of another district? * * *

“Whose duty is it to apportion revenues from taxation of the railroad mileage of the county to the various school districts through which such railroad passes?”

In answer to your first question, you are advised that we know of no officer or officers who are given authority by law to transfer money from a school district which has received the same through error or mistake that rightfully belongs to another district, except the school trustees of the district erroneously receiving the money.

In answer to your second question, you are advised that if the trustees of the district received money by mistake or error which should have been credited to another district, and refuse to transfer such money to the district to which it rightfully belongs, the latter district would be entitled to institute a civil action against the district wrongfully receiving the money.

Section 1759, Political Code (Sec. 848, Revised Codes), provides that every school district, duly organized, is a body corporate, and under its own name or number may sue and be sued; and Section 1803 of the Political Code (Section 883, Revised Codes), provides that "any board of trustees shall be liable as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this title, and they shall pay such judgment or liability out of the school moneys to the credit of such district."

In the case of Jay vs. School District, 24 Mont. 229, the supreme court said:

"If there is a disputed claim against the district, it can be determined only by means of an adjudication under Section 1803."

In the case above quoted, the supreme court held that judgment should not be entered against the district because the claim was not disputed, and because of the fact that the school trustees had no authority to levy a special tax. But under the facts stated in your letter, the claim is disputed, and since the above decision the law has been amended, so that school trustees may make special levies in addition to the funds received from the general school levy and from fines and apportionment from the common school funds.

Laws 1901, page 12.

Laws 1907, page 101. (Section 994, Revised Codes).

In answer to your third question, you are advised that the district could have no right to assess the railroad this year for back taxes, as the railroad has paid these taxes once, and it is not its fault that the same were not credited to the proper district.

In answer to your fourth question, you are advised that it is not the duty of the state board of equalization to apportion the revenues from taxation of railroad mileage to the various school districts. The state board of equalization merely apportions the mileage to the several counties and fixes the valuation thereof.

(Section 3801, Division 5, and Section 3737, Divisions 8 and 11, Political Code; Sections 2584 and 2556, Revised Codes.)

It is the duty of the county commissioners to fix the number of miles of track lying in each city, town and school district within their county.

(Section 3740, Political Code; Section 2559, Revised Codes.)

In our opinion, the only course for School District No. 50 to pursue, in the event that School District No. 7 refuses to transfer the money erroneously accredited to it, is to institute a civil suit against District No. 7 to recover such money.

Yours very truly,

ALBERT J. GALEN,

Attorney General.