Scott. H-48—38,762—27-11-23.

Law (Education) (1925) Department.

Ordinary SERIES.

G.O. No. 31

DATED 10. 1. 1925

6

[Despatch Abstract.]

Elementary Education Act.

Surcharge provision under the Local Boards Act, 1920 - applicat~~bility~~y to expenditure incurred from the E. E. Fund. Advocate Genl's opinion recorded.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

C.F. 30—18,650—3-10-23.

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DEPARTMENT.

Received .... 192 *Registered* 192

Subject. L- Edn 4425 H
8/12/24

ASSISTANT SECRETARY TO GOVERNMENT
3 - DEC 1924
LAW DEPARTMENT

Enclosures.
No.
Spare copies

CF No. 5717

Station Fort St.George., *Dated the* 3rd ~~1st~~ December 192 .

From (Name) J.M. Hooper, Esquire,

(Designation) Examiner of Local Fund Accounts

To The Secretary to the Government of Madras,

L a w (Education) Department.

Sir,

I have the honour to forward herewith a copy of this Office letter No.4889 dated 1st November 1924 and of the opinion of the Advocate General thereon, No.158 dated 24th November 1924, for such action as Government may deem fit with reference to the last para of the 'opinion.'

I have the honour to be,
S i r,
Your most obedient servant,

Hooper.

S.R./2-11-24.

Examiner of Local Fund Accou-

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2/12/24

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Copy of letter No.L.F.4859 dated 1st November 1924, from the Examiner of Local Fund Accounts, Madras, to the Government Solicitor, Madras.

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I have the honour to request you that you will be so good as to obtain and communicate to me the opinion of the Hon'ble the Advocate General on the point discussed in ~~the attached~~ note.

2. I have to request the favour of an early reply.

Note by the Examiner of Local Fund Accounts.

An Elementary Education Fund is constituted for each "local authority" - vide Section 32 of the Elementary Éducation Act (Article VIII of 1920). The term "Local Authority" means a "Municipal Council or a Taluk Board" -- vide Section 3 (ix) of the Elementary Education Act. The Elementary Education Fund thus forms part of the funds held in trust by the local authorities. But, with a view to making better provision for the management of these funds, a separate Act has been passed and in Section 40 thereof, it is stated that, save as otherwise expressly provided by that Act, nothing in the District Municipalities Act, 1920 and Local Boards Act, 1920, shall affect any of the provisions in Chapter III relating to the constitution, control of the Fund, budget and audit. From this, it is not clear whether the surcharge provisions applicable to Municipalities under Rule 60 (1) & (2) of Schedule IV of the District Municipalities Act of 1920 and to Local Boards under G.O.No.1900, L & M., dated 28th August 1923, will apply to the Elementary Education Fund or not. It has been held by Government that, if the funds of a Local Body were to be expended on Educational Institutions not recognised by the Educational Authorities, they are liable to be surcharged -- (vide G.O.No.Mis.2510, L & M., dated 16-12-1922 published in Part I-A of the Fort St.George Gazette dated 19-12-1922). Similarly, if sums were to be spent on Educational Institutions not recognised by the Educational Authorities out of the

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Elementary Education Fund, they are apparently liable to be surcharged.

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2. At the same time, it seems to me that the power to surcharge should be expressly conferred on the auditors by statute and that, in the absence of such specific provision in the Acts of the Legislature, such power cannot be exercised by them.

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3. Government have requested me to investigate the possibility of surcharging expenditure incurred from the Elementary Education Fund in a particular case in which expenditure was incurred from the Elementary Education Fund for an educational institution which was not recognised by the Educational authorities. It is necessary, therefore, to refer the point for legal opinion.

19603-3 LFM 11/8/24 Conf.

In this particular case the Exr. is taking steps to issue necessary surcharge orders & no orders from Govt. are necessary therefor.

(True Copy)

S.R./1-12-24.

2.12.24

T.K. Seenivasagam
Superintendent.

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Inward No.4696.

Opinion. No: 153 & 24-11-1924. 4

Reference:- Letter No. C.F.4889 dated 1st November 1924, from the Examiner of Local Fund Accounts, Madras, to the Government Solicitor, - Elementary Education Act - Expenditure incurred from Elementary Education Fund - Applicability of surcharge - Provision.

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1) Notwithstanding the somewhat indefinite language of the Acts relating to local authorities, I am of opinion that the provisions for audit and surcharge apply to the Educational Funds collected under Act VIII of 1920. The Madras Acts IV of 1919, V of 1920 and the rules under Act XIV of 1920 provide for audit and surcharge in respect of expenditure by the local authorities.

2) Act IV of 1919, s.139:- "All moneys received by the Corporation shall constitute a fund which shall be called the Municipal fund and shall be applied and disposed of in accordance with the provisions of this Act." No doubt what funds are received by the Corporation appear in other sections of the Act, but as far as the language of this section is concerned, it makes all funds received by the Corporation (however received) "Municipal fund" subject to the provisions of the Act.

3) Schedule V, rule 1, prescribes the objects for which the "municipal fund" may be spent.

~~4~~ Act V of 1920, Section 119:- "All moneys received by the Municipal Council shall constitute a fund which shall be called the municipal fund and shall be applied and disposed of, subject to the provisions of this Act or other laws." This language is open to the same observation except that it expressly refers to other laws. This reference is explicable as the Bill which became Act VIII of 1920 must have been before the draftsman at the time and it was known that there might be directions in regard to the application of the education fund by a separate Act dealing with education.

4) Schedule V prescribes the objects on which the funds may be spent.

Act XIV of 1920 s.112:- "The purposes to which the moneys received under this Act may be applied are, in general, everything necessary for, or conducive to the safety, health, convenience or education of the inhabitants, or the amenities of the local area concerned and everything incidental to the administration. This section, unlike the provisions of the other two Acts speaks of "moneys received under this Act". But in view of the provisions of Section 64, it is not inappropriate to include in the "moneys received under this Act" funds received under other Acts for purposes specified therein as these are funds impressed with a trust, only the trust happens to be statutory.

5) The result of all these sections is that each Act deals with all the funds in any manner vested in the local authority ~~vested in the local authority~~ and prescribes the purposes or objects on which expenditure may be made.

6) Act VIII of 1920 (i.e. Madras E.E. Act, 1920) is no doubt an independent act, which vests in these very local authorities a new fund to be administered in accordance primarily with the provisions of that Act. If the primary Acts (i.e. Local Bd. Act, Dt. municipalities Act & City municipal Act) (IV of 1920, V of 1920 and XIV of 1920) applicable to these local bodies were wholly inapplicable to the funds vested in them by the new Act, section 40 will be unintelligible. It says not that those Acts shall not apply, but that those Acts shall not "affect" which has been often interpreted to mean that except in so far as the special Act does not ~~supply~~ apply, the general Acts will have operation.

7) The Act no doubt provides for budget and audit, but that is not evidence of any opinion on the part of the Legislature that, but for that specific provision, the main acts and their provisions will not apply. It is specifically referred to for the purpose of making intelligible and placing in proper context the provisions as to the binding character of the orders by the Governor in Council enacted in the provisions as to budget and audit.

8) On the whole, I am of opinion that there is nothing in the provisions of Act VIII of 1920 to exclude the operation of

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the provisions of the Acts primarily applicable to these bodies as to audit and surcharge.

9) It may however be well to make this matter clear in the new Education Bill that will be introduced shortly.

MADRAS, 24th November 1924. (Signed) T.R.V. Sastri, ADVOCATE-GENERAL.

(True Copy)

S.R./27-11-24. Superintendent.

27-11

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Law (Edn.) Dept. 6

[C. No. 4425 A] from the Ex.r of L.F.A. No. 5717 dt 3-12-24

Subject Surcharge rules framed under the Local Boards Act, 1920 – Applicability to expenditure incurred from the E.E. fund

The Examiner has forwarded a copy of the Advocate General's opinion on pp 4-6 C.F. for considering the desirability of making necessary ~~amendment~~ addition to the E.E. Act, 1920 so as to make it clear that surcharge ~~rules~~ provisions [are applicable also to expenditure incurred from the E.E. fund. Submitted the suggestion has already been adopted in the E.E. bill submitted separately. No further action is necessary.

2. The ~~file may~~ papers may be recorded after perusal by Law (Drafting) with reference to

Q Law (Drafting) &c S's opinion recorded in G.O. No. 510 Leg dt 7.4.24.

AP 22/12/24
NB 23/12

CR 23.12.24

U.S. (Drafting)

L. Edn. 58A 7/1/25

Law Edn. 4425 A1 3.1.25

Drafting C No 7 3.1.25

Thanks

Law Edn. Dy 7 6/1/25

Law (Edn.) Dept.

Order Mis 31 dt 10-1-25.
Recorded

AP 8/1/25
NB 8/1/25

CR 8.1.25

V.T.K. 9.1

When given for copying
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When examined
When signed
192

READ AGAIN G.O. No. , DATED
192 .

CURRENT No.

ENCLOSURES TO C. No.

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LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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