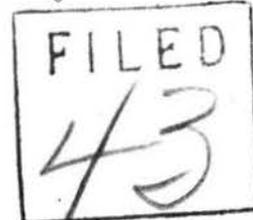


SCHOOLS: County Court cannot discount or compromise a loan made out of the school funds.

August 24, 1938

Honorable Glen W. Huddleston
Prosecuting Attorney
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Carrollton, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of August 5th, wherein you request an opinion from this department on the following questions:

"1 - Several years ago the Carroll County Court made a school funds loan on a farm belonging to a resident of Carroll County. About a year ago this mortgagor filed her petition in bankruptcy in the Federal Court of Kansas City, Missouri, under the Frazier-Lemke Act. One of her sureties on her school loan bond agrees to pay a part of the loan that is due and owing the County, if the County will scale down the amount of its claim. Can the County Court legally scale down its claim under the Frazier-Lemke Act, in order to effect a compromise? Or, can the County Court legally accept the amount offered by the mortgagor's surety to get the case dismissed from the Bankruptcy Court? As a matter of information, the surety on this loan is worth more than the amount of the loan above his statutory exemptions.

"2 - Can the County Court legally compromise any school fund loan and accept less than

the amount of the interest and principal of the loan, even though in their judgment they could collect more money by the compromise than if they foreclosed their mortgage and obtained a judgment against the surety on said loan?"

The county courts of this state are organized and granted privileges and authority under Section 36, Article VI, of the State Constitution, and Sections 9243 and 9245, R. S. Mo. 1929, to make orders in compliance with the investment of school funds.

Section 9243, R. S. Mo. 1929, reads as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent. per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; * * *"

Section 9245, R. S. Mo. 1929, reads as follows:

"Whenever any county in this state may have, separate and apart from the township funds, any public school fund arising from any source whatever, the same shall be under the jurisdiction of the county court of said county, who shall be governed in its care and investment by the same rules and regulations as govern its actions in the township funds--the proceeds of said funds to be collected annually and distributed as provided in section 9257."

County courts are not the general agents of the county or the state, and their powers are limited to the statutes and the State Constitution and they have only such authority as is expressly granted them by the statutes and Constitution. This was so held in the case of King v. Maries County, 249 S. W. 418, l. c. 420, where the court said:

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. Butler v. Sullivan County, 108 Mo. 630, 18 S. W. 1142; Sturgeon v. Hampton, 88 Mo. 203; Bayless v. Gibbs, 251 Mo. 492, 158 S. W. 590; Steines v. Franklin County, 48 Mo. 167, 8 Am. Rep. 87. This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. Sheidley v. Lynch, 95 Mo. 487, 8 S. W. 434; Walker v. Linn County, 72 Mo. 650; State ex rel. Bybee v. Hackmann, 276 Mo. 110, 207 S. W. 64."

Article VI, Section 36, of the Missouri Constitution reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

In construing that section, the Supreme Court in the case of State ex rel. v. Patterson, 229 Mo. 273, l. c. 391, held:

"The county courts are denied any rights except those expressly conferred."

Under the above statutes and authorities, the county courts are clothed with limited and specifically delegated powers.

Section 9256, R. S. Mo. 1929, authorizes the county courts to bid in property sold under school fund mortgages. Other sections provide other actions to be taken in protecting school fund mortgages, but no provisions are set out to allow the county court to discount a mortgage, even where it will be a greater loss if not discounted.

In the case of *Montgomery County v. Auchley*, 103 Mo. 492, l. c. 503, the court said in quoting from *Veal v. County Court*, 15 Mo. 412:

"In *Veal v. County Court*, 15 Mo. 412, the county court had loaned school funds at ten-per-cent. interest, and afterwards, on the petition of the inhabitants of the township to which the funds loaned belonged, the court reduced the rate of interest to six per cent. This court held that this order reducing the interest was illegal, and Judge Scott, in referring to these funds and the nature of the trust assumed by the county courts, in regard to them, said: 'In relation to these funds the county courts are trustees. They have no authority to dispose of the principal intrusted, or any of its interest, otherwise than is prescribed by law. There is no difference in this respect between the principal and interest of these funds. If they can give away the one, they can give away the other. * * * The welfare of the state is concerned in the education of the children. She has provided and is providing means for that purpose, not only for those now in existence, but for those who may come after them. The fund, as has been

said, is a permanent one, and, if every man, woman and child in a township should petition the county court to give away, that which is by law intrusted to it, for the education of its children, it should without hesitation reject their prayer.'"

Section 7103 of 1879, above referred to, is now Section 9243, R. S. Mo. 1929.

Title 11, Section 203, of the United States Code Annotated sets out the procedure for a mortgagee to protect his interests in regard to mortgages secured by real estate, and is too lengthy to set out in this opinion. This section is also commonly called the Farm Loan Moratorium and the Frazier-Lemke Act. However, it does not in any way give the county court any permission or license to violate the state laws. The county courts are purely creatures of solely statutory origin and have no common law or equitable jurisdiction. This was so held in the case of Lafayette County v. Hixon, 69 Mo. 561.

CONCLUSION

In view of the above authorities, it is the opinion of this department that even though the property securing a school fund mortgage would bring less on foreclosure or would depreciate on account of excusable delay in foreclosure, under the Frazier-Lemke Act, the county court has no authority to compromise with a surety on the loan or discount the loan in any manner. It is the duty of the county court to foreclose, according to law, upon investments made by the county court out of the school fund in accordance with Sections 9243 and 9245, supra.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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