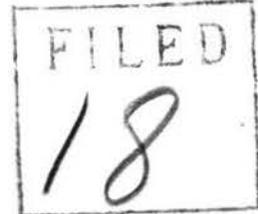


COUNTY COURTS AND SCHOOL:
FUND MORTGAGES :

The County Court under its powers to manage and dispose of properties purchased under school fund mortgages may enter into contracts of sale for same and bind subsequent courts.

December 15, 1939

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Dear Sir:

This is in reply to yours of recent date, wherein you request an opinion from this department on the question of whether or not in cases in which the county court has purchased at foreclosure lands sold under school fund mortgages can enter into contracts of sale with prospective purchasers for such lands, providing for the payment of the lands at so much per month, and upon payment of a certain amount providing for the execution and delivery of a deed to the lands by the county court.

As you state in your letter, the title to the land would remain in the county court pending certain payments made under the contract, and since the title would remain in the county court, of course, such lands would not be subject to taxation until the deed was delivered.

The county courts, by virtue of provisions of Section 9256 R. S. Mo. 1929 are authorized to purchase at foreclosure sales, lands which are sold under school fund mortgages. The latter part of this section provides that the county court may purchase and manage such lands, and provides as follows:

" * * * The county court of any county holding property acquired as aforesaid may appoint an agent to take charge of, rent out or lease or otherwise manage the same, under the direction of said court; but as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be resold in such manner and on such terms, at public or private sale, as said court may deem best

for the interest of said school or schools; and the money realized on such sale, after the payment of the necessary expense thereof, shall become part of the school fund out of which the original loan was made."

It will be seen by this section, that the county court acts as a trustee for the school funds in the management and handling of these lands, and it derives its power and duties from the statute.

In the case of Hillside Securities Co. v. Minter, 300 Mo., 380 the court held that county courts or other public authorities in managing public affairs must follow the expressed provisions of their statutes or their contract will be void.

Since there are no cases reported in this state on the question which you have submitted, we will have to look to the statutes only and from a construction of the statutes determine whether or not the court can do what you inquire about. You will note that section 9256 permits the county court to appoint an agent to take charge of these lands; to rent, lease or otherwise manage them under the direction of the court. It further provides that as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, the county court may resell the lands in such manner and on such terms, at public or private sale, as such court may deem best for the interest of the school or schools. These provisions are very broad, and it seems that the law makers intended that the county courts sell these lands in such manner and on such terms as it may deem best for the interest of the school funds involved.

One of the reasons assigned in your letter, that the court might not be authorized to enter into a contract of sale for these lands, is that the land, pending the delivery of the deed, would be in the name of the county and not subject to taxation. You are correct in that conclusion, but that would be a matter which the county court would take into consideration in determining the best interests of the school funds when it entered into the contract of sale.

As I understand your question, the contract of sale would provide that when certain payments are made the county court would execute a deed to the lands. While the prospective purchaser would not have such an interest in these lands that he would be

taxed as the owner of an interest, yet we think that the interest which he has in the contract would be taxable under Section 9756 R. S. Mo. 1929, under the 11th subdivision thereof. We think that the taxpayer who held such a contract as you describe in your request would be required to return as his property whatever the value of his interest is in the contract which he holds with the county court for the sale of such lands. That being true, the state, county and any political subdivisions of the state interested in the tax would not be losing any taxes on account of such a contract.

You also ask in your letter, whether or not the county court by a contract as heretofore described, could bind future county courts so that such courts, when the prospective purchaser had made certain payments, would be required to execute a deed to the purchaser, and take back a mortgage on the land payable to the school fund out of which the money was loaned. The answer to this question would depend upon the circumstances of each particular transaction, but if the county court in entering into such a contract has not acted arbitrarily or fraudulently or irregularly, and if at the time the prospective purchaser has made payments under the contract authorizing him to demand the deed, then if that purchaser can meet the requirements of the statute as to giving proper security for the school fund mortgage we think a subsequent county court would be bound by the contract.

In the case of *Aslin vs. Stoddard County*, 106 S. W. (2d) 472, l. c. 477, it was held that the county court has power to make a contract for a reasonable time, the performance of which will extend beyond the term of their office of a member or members of the court and at l. c. 476 in the *Aslin* case the court said:

"The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which

the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs."

CONCLUSION

From the foregoing, it is the opinion of this department that if the county court, acting as ordinary business men would act deems it advisable and advantageous to the school funds, it may enter into a contract of sale of lands which it has purchased under foreclosure of school fund mortgages, and it may by such contracts bind future county courts to execute and deliver deeds in accordance with the terms of the contract, and accept school fund mortgages thereon, providing the mortgagor furnishes the security which is required.

Respectfully submitted,

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APPROVED:

W. J. BURKE (Acting Attorney-General)

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