

COUNTY CLERK: County Clerk not entitled to pay from School Funds for making loans.

January 24, 1945

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Honorable Ather Ellis  
Clerk of the County Court  
McDonald County  
Pineville, Missouri

Dear Sir:

This will acknowledge your letter of December 4, 1944, to this Department, in which you request an opinion on your right to have additional compensation for extra services performed in making loans of the County School Fund of your County. Your letter states:

"Yesterday the County Court of this County made an order allowing me \$25.00 monthly for taking care of the County School Loans. They feel that there has been a lot of additional work added by the new Law governing the granting of new loans.

"I would like for you to write me your opinion on this before I accept the money. I will be paid out of the Loanable School Funds."

Section 8 of Article XI of our Constitution covers the question of County School Funds. That section in part states:

"All moneys, stocks, bonds, lands and other property belonging to a county school fund, \* \* \* shall be paid by persons as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund; the income of which fund shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State."

Sections 10376, 10384, 10385 and 10386 of Article 2, Chapter 72, R.S. Mo. 1939, were repealed by the Legislature of 1943, and new sections known as 10376, 10384, 10384a, 10384b, 10385 and 10386, Laws of 1943, page 880, were enacted in lieu thereof. Section 10376 contains the same language as above quoted from Section 8, Article XI of the Constitution. For the sake of brevity, Section 10376, Laws of 1943, page 880, is not quoted, but a comparison of that section with the constitutional provision above referred to will disclose that so far as safeguards are concerned, for the faithful preservation of the school fund of the several counties of the State, they are practically identical.

The Constitution, the Statutes and the decisions rendered by our Supreme Court all disclose that the school fund of the several counties is looked upon both by the Legislature and the Courts with a jealous eye and strong terms both in the Statutes and in the decisions of the Courts are indulged in for its absolute preservation, and its appropriation can be made only for school purposes.

The question of the security required and demanded on a school fund loan and the care, caution and fidelity to their trust in the conduct of the County Court in making such loans was before our Supreme Court in the case of Saline County et al. v. Thorp et al., 88 S.W. (2d) 183. On this question the Court, l.c. 186, said:

"\* \* \* It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. *Montgomery County v. Auchley*, 103 Mo. 492, 15 S.W. 626."

The case of *Montgomery County v. Auchley*, 103 Mo. 492, cited in the above *Saline County* case, was before the Supreme Court. The Court in holding that the County Court is a trustee of the school fund, l.c. 502, said:

"\* \* \* The solution of this question will depend largely upon the power of the county courts in regard to school funds. That they are simply trustees of these funds will not be disputed. All powers they possess in regard to them are derived from the statutes. \* \* \*"

The question of whether the County Court had the power to delegate to another the right to pass upon and determine the value of any security given to secure a school fund loan was discussed by the Court. That matter is not involved in your letter but what the Court said about such right of the County Court to delegate that power bears upon the whole question of the strictness to which the Courts hold the County Courts of the State in the performance of their duties in making school fund loans. The Court in holding that the County Court had no such power, l.c. 506, in the Montgomery County case, said:

"\* \* \* We would regard it as hazardous to lay down the doctrine that county courts may delegate the power to approve a loan and the security for a loan. If they can delegate this power to the prosecuting attorney, they can delegate it to anybody, not under oath, whether responsible or not, whether discreet or not, and if the bars should be thrown down thus, it would not be long till there would be no trust funds to be loaned."

There are numerous cases in this State in which our Supreme Court has held that the County School Fund of the several counties of the State is a trust fund and that the County Courts are held strictly to the exercise of such authority in respect thereto as is given by the Statutes. In the case of Morrow v. Pike Co., 189 Mo. 610, l.c. 622, the Supreme Court said:

"\* \* \* It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund (Ray County to use v.

Bentley, 49 Mo., l.c. 242); It may not divert the general county revenue to its protection, and, on the other hand, it can not apply the school fund to the payment of ordinary county debts.  
\* \* \*

In the case of Ray County v. Bentley et al., 49 Mo. 236, l.c. 242, in defining the duties and extent of the power of the County Court in such matters our Supreme Court said:

"\* \* \* The County is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the law-making power for the appropriation and distribution of the fund. In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. \* \* \*"

The Legislature of this State in 1943, repealed Section 13433, Article 2, Chapter 99, R.S. Mo. 1939, covering salaries of County Clerk,s Deputies and Assistants, etc., and re-enacted a new section in lieu thereof to be known as Section 13433, relating to the same subject, Laws of 1943, page 874. This section fixes the annual salaries of county clerks in counties having a population of 15,000 and less than 17,500, such as McDonald County appears to be from the last census, each at \$1700 for the Clerk and \$1600 for deputies and assistants. There is a proviso in said section that the Court, in all counties in this State having a population of less than 40,000, may allow a county clerk in addition to the amount herein specified for deputies' or

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assistants' hire, a further sum not to exceed \$500 per annum to be used solely for clerical hire, to be determined by the County Court of such county. This section thus fixes the full annual remuneration of county clerks in counties such as McDonald County, Missouri, and does not provide for any sum or appropriation to be made to them even out of the general county revenues much less out of the school fund, and such allowances as are contained in said Section 13433, Laws of 1943, page 874, are full compensation for county clerks for all of their services of any kind whatsoever.

Before a public officer can claim compensation he must be able to point out a statute authorizing such compensation. The rule was stated in *Nodaway County v. Kidder*, 129 S.W. (2d) 857, 860, as follows:

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment.  
\* \* \*"

#### CONCLUSION.

Considering the subject matter of the action of the County Court of McDonald County in making the order of record allowing the clerk of the County Court \$25.00 for taking care of the school loans upon which the request as to the legality thereon for an opinion herein is based, and applying the Constitution and Statutes of this State and the decisions of our Supreme Court thereto above cited, it is the opinion of this Department that said action and order of the County Court of McDonald County is not authorized by law; that said County Court cannot appropriate out of, either the principal or interest of said school fund of McDonald County, any sum whatsoever and pay it to the county clerk of McDonald County as compensation for any services he may perform or has performed in making loans of said school funds; and that the County Clerk may not lawfully accept or receive any such compensation, because under the Statutes and decisions cited and quoted, full compensation for all of his services is included in his salary fixed by law.

APPROVED:

HARRY H. KAY  
(Acting) Attorney General

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

GWC:lr