

**SALE OF COUNTY PROPERTY:** County Court has authority to convey real estate belonging to the county; has no authority to accept a note secured by a deed of trust from the purchaser to secure the unpaid balance of the purchase price.

**MORTGAGE:**

December 21, 1950



Honorable B. C. Tomlinson  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion from this office. Your request reads as follows:

"I would like an official opinion from your office in answer to the following situations: St. Francois County owns a County Poor House building with surrounding land. Can the County Court dispose of this property at a fair market price by sale to private individuals who intend to continue operating said home as a private nursing home wherein the county will board the patients that are now being kept at the County Poor House? Also can the County Court accept a deed of trust from the purchasers to secure the unpaid balance of the purchase price?"

Your first question, "Can the county court dispose of this property at a fair market price to private individuals \* \* \*," is answered in the affirmative by an opinion from this office addressed to the Honorable J. R. Gideon under date of February 18, 1949. I am enclosing a copy of that opinion.

Your second question is : "Can the county court accept a deed of trust from the purchasers to secure the unpaid balance of the purchase price?"

In the case of *Butler County v. Campbell*, 353 Mo. 413, 182 S.W. (2d) 589, the Supreme Court reiterated a well-established principle in these words:

"County courts are \* \* \* the agents of the county, with no powers except what are granted, defined and limited by law, and, like all other agents, they must pursue their authority, and act within the scope of their powers."

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While Section 2480, R.S. Mo. 1939, quoted in the above mentioned opinion, confers upon the county court the power to control and manage the property, real and personal belonging to the county with the power to sell and convey any real estate belonging to the county, I find nothing in the state statutes which would allow all or any part of the purchase price of the type of property you describe be covered by a note secured by a deed of trust on the property to be conveyed.

In the past it has been a well-established practice for the county courts to invest and loan money from the school fund. The power and authority to make such loans was specifically conferred upon the county courts by Sec. 10376, R.S. Mo. 1939. You will particularly note that this power and authority to make loans from this fund was specifically conferred upon the county court, however, and that no general power to make loans was given the court except from this fund. This section, 10376, was repealed and re-enacted by Laws 1945, p. 1628, and the power of the county courts to make investments from the school fund was limited by the following provision:

"On and after the effective date of this act, all real estate loans and investments now belonging to the county school funds, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said school fund of the county shall be reinvested in registered bonds of the United States, or in bonds of the state, or in approved bonds of any city or school district thereof, or in bonds or other securities, the payment of which is fully guaranteed by the United States Government, and shall be preserved as a county school fund."

You will note the county court no longer has conferred upon it the power to make loans to individuals from the school fund taking a mortgage or deed of trust as security for the repayment of such loan.

We direct your attention to Section 13683, R.S. Mo. 1939, which contemplates the extension of credit by the county court to a purchaser of certain real property from the county. Said section reads as follows:

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"When any credit shall be given upon the sale of any lot for any part of the purchase money, the purchaser shall give his note or bond with sufficient sureties to the commissioner, for the use of the county, to secure the payment of each installment; and the commissioner shall deliver to the purchaser a certificate describing the lots sold, the price, the amount paid, if any, the balance to be paid, when due and how secured."

As pointed out in the case of Missouri and Southwestern Land Company v. Quinn, 73 S.W. 184, 172 Mo. 563, there is no authority under this statute for the county court to convey land until it is paid for. The court (or a commissioner acting as agent for the court) was authorized to deliver to a purchaser a certificate describing the lots sold, the price, the amount paid, the balance to be paid, when due and how secured. After notes given for the purchase price had been paid then a deed conveying the property was to be delivered to the purchaser. You will note, however, that this statute contemplated the extension of credit by the county court on the purchase price of particular land and is not a power to extend credit on the purchase price of other real property from the county. The only sale of real estate by the county which it was contemplated this statute would affect was that unused residue of land which had been reserved for county seat purposes. This statute is discussed here only for the purpose of emphasizing that while the county court had conferred upon it a limited power to extend credit to a purchaser in the sale of land which had been reserved for county seat purposes that court does not have a broad general authority in the sale of other land belonging to the county to accept a note secured by a deed of trust or mortgage for a part of the purchase price.

Article VI, Section 23 of the State Constitution reads in part as follows:

"No county \* \* \* shall \* \* \* lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

We find nothing in the Constitution which would authorize the county to extend credit on the sale of real estate as outlined in your letter.

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CONCLUSION

A county court has the power and authority to sell and convey real estate belonging to the county.

A county court does not have the power and authority to accept a deed of trust from the purchaser of real property belonging to the county to secure the unpaid balance of the purchase price.

Respectfully submitted,

JOHN E. MILLS  
Assistant Attorney General

APPROVED:

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J. E. Taylor  
Attorney General