

TAXATION & REVENUE:

Property bought in by County under foreclosure of School Fund Mortgage exempt from general taxes.

11-23

November 13, 1933.



Hon. Elliott M. Dampf
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Mr. Dampf:

This Department is in receipt of your letter of October 30th, with request for an opinion, which letter is as follows:

"Will you kindly advise the undersigned if Real Property upon which there is a loan of school money, secured by a Deed of Trust, is subject to taxation when the same has been taken over by the County Court for non-payment of the note and is in the possession of the County Court."

Replying to your question, which, as we understand it to mean, is whether or not real estate on which a school fund loan has been made by the county court is foreclosed under the provisions of the terms of the school fund mortgage and statutes, and title is taken in the county, whether that property thus foreclosed is exempt from general taxes, that is, state, county, township, road and bridge, and school taxes, etc.

Sections 9250, 9251, 9252 and 9253, R. S. Mo. 1929, provide the method and means by which the school money of the county may be loaned out on real estate by the county court and provide that in case of default in payment of the loans by the borrower, what procedure shall be taken by the county court. Section 9254 R. S. Mo. 1929, provides how the county court may make an order to sell said real estate under a sheriff's sale and Section 9256 R. S. Mo. 1929, provides:

"AUTHORITY TO REPOSSESS PROPERTY BY PURCHASE.--* * * *, the county court having the care and management of the school fund or funds out of which such loan was made may, in its discretion, for the protection of the interest of the schools, become, through its agent thereto duly authorized, a bidder, on behalf of its county, at the sale of such property as aforesaid, and may purchase, take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of the general school funds, the property it may acquire at such sale aforesaid. * * * * *."

It will be seen that the title to said real estate may be lodged in the county. The question presented for determination here is whether the real estate, the title of which has been lodged in the county, under foreclosure as aforesaid, is exempt from taxation under Section 6, of Article X, of the Missouri Constitution and its correlated statute, Section 9743 R. S. Mo. 1929.

The section of the Constitution just referred to is as follows:

"PROPERTY EXEMPT FROM TAXATION.--The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; also, such property, real or personal, as may be used exclusively for agricultural or horticultural societies: Provided, That such exemptions shall be only by general law."

Section 9743, R. S. Mo. 1929, in part reads as follows:

"* * * * *: fourth, lands and other property belonging to any city, county or other municipal

corporation in this state, including market houses, town halls and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; * * * * *

In Cooley on Taxation, Fourth Edition, Vol. 2, Section 621, it is said:

"Some things are always presumptively exempted from the operation of general tax laws, because it is reasonable to suppose they were not within the intent of the legislature in adopting them. Such is the case with property belonging to the state and its municipalities, and which is held by them for public purposes. All such property is taxable, if the state shall see fit to tax it; but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself in order to raise money to pay over to itself, and no one would be benefited but the officers employed, whose compensation would go to increase the useless levy. * * * * *"

The property, real and personal, of the state, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Counties being one of the political subdivisions of the State, and being specifically exempted, it is the opinion of this Department that the real estate purchased by the county under the conditions as set forth in Section 9256, R. S. 1929, is exempt from general taxes such as state, county, school, township, road and bridge, and is not therefore subject to taxation.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.