

SCHOOLS :

Interest compounded on county school mortgages not to be cancelled by county court.

9251 R S Mo 1919

12-11

December 8, 1933.



Hon. J. B. McGuffin
Prosecuting Attorney
Lawrence County
Mt. Vernon, Missouri

Dear Mr. McGuffin:

This is to acknowledge your letter wherein you request an opinion relative to the following facts:

"A number of our citizens here indebted to the County on School loans, and wholly unable to pay compound interest upon their loans, are seeking to have the compound interest feature cancelled.

Our County Court feels liberally inclined in the matter but asks an opinion from your office."

I.

Section 9243, R. S. No. 1929, provides in part 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, "

And further,

"shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, * * * * *."

Section 9244 R. S. Mo. 1929, provides in part:

"The county court shall not loan any money belonging to the school fund to etc., * * * any officer of the county who shall violate the provisions of this section by authorizing any such loan or drawing any warrant for moneys loaned in violation of this section shall be held responsible for the sum so loaned, with interest thereon to be recovered in the name of the county to the use of the district whose fund has been so used."

Section 9251 R. S. Mo. 1929, in part provides:

"When any moneys belonging to said funds shall be loaned by the county courts, they shall cause the same to be secured by a mortgage in fee on real estate within the county, free from all liens and encumbrances etc. "

And further,

"; that in default of payment of the interest, annually, or failure by principal in the bond to give additional security when thereto lawfully required, both the principal and interest shall become due and payable forthwith, and that all interest not punctually paid shall bear interest at the same rate of interest as the principal. * * * * *"

In *Veal v. Chariton County*, 15 Mo. 412, l. c. 414, the court said:

"In relation to these funds, the county courts are trustees. They have no authority to dispose of the principal entrusted, or any of its interest, otherwise than is prescribed by law. There is no difference in this respect between the principal and the interest of these funds. If they can give away the one,

they can give away the other. If a neighbor should put money in their hands to loan out for him at interest, and they should give it away or release the interest, would they not expect to make it good out of their own purses? What is the difference between that case and this? Would they not be ashamed, when asked for the money with which they were trusted, to offer an excuse for not paying it, that all the people of the county in which they lived had petitioned them to give it away and they had done so?"

And further,

"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 it away, that which is by law entrusted to it, for the education of its children, it should without hesitation, reject their prayer. The will of the people, when expressed in relation to matters in which they have a right to interfere, should be respected by their agents, but when they call upon those to whom is confided the administration of the laws, to sacrifice their trusts and to violate their oath, their will should be disregarded."

See also, *Montgomery County v. Auchley*, 103 Mo. 492;
Lafayette County v. Hixon, 69 Mo. 581.

II.

It is our opinion that the County Court shall not cancel the compound interest feature.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED: _____
ROY McKITTRICK
Attorney-General.