

GO. FY COURTS
SCHOOL FUND MORTGAGE *- Procedure required to foreclose
Section 9243, R. S. Mo. 1929.

February 14, 1933.



Hon. H. M. Saxbury
Prosecuting Attorney
Schuyler County
Queen City, Missouri

Dear Mr. Saxbury:

Your recent letter directed to the Attorney-General has been handed the undersigned for attention. In your request for an opinion from this department, you asked the following:

"Is there any legal way in which a County Court may take over land under school mortgage fund save by a legal proceeding? Can they have the mortgage holder deed the said land to a Commissioner instead of proceeding either by judgment and execution or by a commissioner through the courts?"

The Constitution of Missouri provides, Article 11, Section 10,

"All county school funds shall be loaned only upon unencumbered real estate security of double the value of the loan, with personal security in addition thereto."

This mandatory provision of the Constitution requires that in addition to the first mortgage upon unencumbered real estate, personal security shall be required by the county court before loaning the school funds of the county. The

*Article IX §7
now only committed
in U.S. Bonds, +
State Bonds.*

Hon. H. W. Saxbury #2

*Repealed
(171.110)*

personal security is usually furnished by the execution of a school fund bond, executed by the borrower and resident freeholders of the county as his sureties, as provided in Section 9251, R. S. No. 1929.

Section 9243 R. S. No. 1929, makes the County Courts of the several counties trustee for, and custodian of, the county school funds and provides, among other things, that such funds,

"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 collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this State."

166.131

Section 9952 R. S. No. 1929, provides the form of mortgage and requires a provision for the manner of foreclosure upon default in the payment of the indebtedness secured thereby.

*140.080 (1949)
140.100 (1949)*

Section 9256 R. S. No. 1929, confers upon county courts the right to acquire title to property upon which school fund loans have been made and sets forth the manner under which title may be so acquired, namely, a purchase through an agent at the sale under foreclosure.

140.440 (1949)

In as much as the mandatory provisions contained in the Constitution, supra, required the county court to take a first mortgage upon lands of double the value of the loan to be made, the land then should be first subjected to the payment of the debt upon default in its payment. In the event of a deficiency from the sale under foreclosure, then an attempted recovery upon the school fund bond would be required.

By reason of the provisions of Section 9243, R. S. No. 1929, the court cannot properly discharge its public duty until it has exhausted its entire remedy in sacredly preserving such loaned fund. The county court cannot in the opinion of this department lawfully accept a deed for the land in satisfaction of the indebtedness owing to the school fund and by such act release the surety or sureties upon the school fund bond.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED: _____

ROY McKITTRICK
Attorney-General