

FUNDS: "County public school fund", "seminary fund" and "public school fund" discussed.

1-22
January 19, 1934.



Hon. Roland Boynton
Attorney-General
Topeka, Kansas

Dear General Boynton:

This office acknowledges receipt of your letter dated January 2, 1934, as follows:

"In Kansas the law requires the State School fund Commission to invest the income from our Permanent School Fund in certain government, state, and municipal bonds and warrants, and provides that in investing this income no more than par be paid for bonds, nor more than the actual market price. It has been the custom in Kansas for years, in investing this fund, to pay par for municipal bonds when they are offered by the various municipalities.

It would be of material assistance to me if you would write me and tell me whether or not in Missouri a similar condition exists; that is, do you have a method provided by statute for the investment of moneys received from school lands, and if so, what is the practice in your state and under whose supervision does it fall? Any information you can give me will be gratefully received."

I.

Section 9247 R. S. Mo. 1929, reads as follows:

"The proceeds of the sixteenth section, or other lands selected in lieu thereof, the

interest of such proceeds, the rents and profits of such lands, and all the public school moneys which shall be apportioned to any unorganized township, arising from dividends, proceeds and profits of the public school fund, shall constitute a township school fund."

Section 9248 R. S. Mo. 1929, provides:

"The county courts, respectively, shall have the care and management of the school funds of the several townships within their respective jurisdictions, and shall cause accounts thereof to be stated and kept so as to exhibit the funds of each township separately, and the disposition thereof."

Section 9245 R. S. Mo. 1929, provides:

"Whenever any county in this state may have, separate and apart from the township funds, any public school fund arising from any source whatever, the same shall be under the jurisdiction of the county court of said county, who shall be governed in its care and investment by the same rules and regulations as govern its actions in the township funds--the proceeds of said funds to be collected annually and distributed as provided in section 9257."

Section 9250 R. S. Mo. 1929, reads as follows:

"Whenever there shall be in the county treasury any money belonging to the capital of the school fund of any township therein, the county court of such county shall loan the same for the highest interest that can be obtained, not exceeding eight nor less than four per cent. per annum, upon conditions and subject to the restrictions hereinafter set forth."

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

"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, of the value of double the amount of the loan, with a bond, and may, if they deem it necessary, also require personal security on such bond; * * * * * But before any loan shall be effected, the borrower shall file with the county court an abstract of title at the time he files his bond and mortgage to the real estate which is to be mortgaged."

In *Veal v. Chariton County*, 15 Mo. 412, l. c. 414, the Supreme Court of Missouri 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."

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

From a reading of the above statutes you will see that the county courts of the several counties have complete custody and control of the "permanent school fund" derived from the sale of land in their respective counties. The statute only permits the investment of this fund in real estate; provision being also made for the giving of a bond to secure the faithful performance of the conditions surrounding the loan. The Supreme Court has declared this fund to be a sacred one and the management of same strictly construed.

II.

In addition to the above fund there is a "state public school fund" (Art. 24, Chap. 57, R. S. Mo. 1929).

Section 9712 R. S. Mo. 1929, provides in part as follows:

"There is hereby created a public school fund, the annual income of which shall be applied as hereinafter directed. The proceeds of all lands that have been or may be hereafter granted by the United States to this state, and not otherwise appropriated by this state or United States; also, all moneys, stocks, bonds, lands or other property now belonging to any fund for the purposes of education, except where- in the vested rights of townships, counties, cities or towns would be infringed; * * * * the income of which, together with not less than twenty-five per cent of the state revenue, shall be applied annually to the support of the public schools provided for in this chapter, to be apportioned as hereinafter provided."

Section 9715 R. S. Mo. 1929, relates to the investment of such funds and provides in part as follows:

"Whenever there shall be in the treasury or elsewhere, subject to the order of the treasurer, any money belonging to the capital of the public school funds, the state auditor shall make reports thereof to the state board of education, who shall direct the investment of the same in bonds of the United States, bonds of the state of Missouri, or state certificates of indebtedness. That portion of the income and revenue to be distributed for the support of the public schools shall be payable on the warrant of the auditor, in favor of the treasurers of the several counties, in each year, immediately after the apportionment of such moneys shall have been made and filed: Etc."

The statutes also create a "seminary fund" (Art. 25, Chap. 57, R. S. Mo. 1929).

Section 9717 R. S. Mo. 1929, provides in part as follows:

"There is hereby created and especially established a fund for the support of the university of the State of Missouri, the college of agriculture and the school of mines and metallurgy, to be denominated the seminary fund, which shall consist of: Etc."

Laws of Missouri, 1933, page 389, Section 9720, provides:

"The State Board of Education, as constituted by Sec. 4, Article XI, of the Constitution, shall be Commissioners of the Seminary Fund."

Section 4, Article XI, of the Constitution of Missouri, provides:

"The supervision of instruction in the public schools shall be vested in a 'Board of Education,' whose powers and duties shall be prescribed by law. The Superintendent of Public Schools shall be president of the board. The Governor, Secretary of State and Attorney-General shall be ex officio members, and, with the Superintendent, compose said Board of Education."

Section 9724 R. S. Mo. 1929, pertains to the investment of the "public school fund" and "seminary fund" and reads as follows:

"The state board of fund commissioners shall invest all money belonging to the 'public school fund' and to the 'seminary fund' that has accumulated or may hereafter accumulate in the state treasury, in registered county, municipal or school district bonds of this state, or in their discretion in the approved registered bonds of any drainage or levee district in this state,

at not less than par value, and shall at all times keep said fund so invested as far as possible. Whenever said board shall contract with the holder of any such bonds for the purchase thereof, the bonds shall be delivered to the state treasurer and a certificate of that fact filed with said board, and thereupon a requisition shall be made by the board of fund commissioners upon the state treasurer, payable out of the fund for which the investment is to be made, in favor of the holder of such bonds, for the purchase price agreed upon between him and said board. The board of fund commissioners shall enter in full upon its records a description of all bonds purchased by it, the particular fund out of which the bonds were purchased, the person from whom the said bonds were bought, the price paid therefor and the date of the transaction, and shall also require the state treasurer to give a receipt for said bonds, which shall be filed with the state auditor."

Article 26, Chapter 57, R. S. No. 1929, pertains to gifts to public schools and university, and designated as a "fund", and makes the state treasurer responsible for the safe keeping, reinvestment and disbursement of this fund.

The supervision of the "state public school fund" and the "seminary fund" vests in the board of education; the Governor, Secretary of State and Attorney-General being ex officio members with the Superintendent. These funds may be invested in registered county, municipal or school district bonds of this State or in their (Board) discretion in approved registered bonds of any drainage or levee district in this State at not less than par value.

Trusting the above is the information you desire, and if we may be of further assistance, please let us know.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG