

SCHOOLS: COMPROMISE OF SCHOOL FUND MORTGAGES.

11-17



November 7, 1934.

Hon. Ray L. Kay,  
Prosecuting Attorney,  
Moniteau County, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter dated October 13, 1934, wherein you inquire as follows:

"The County Court in years preceding my term of office made some loans of the Capital School Funds on real estate, when the value of real estate was inflated, and took the bond as provided by Statute. The real estate is now of such little value that it will not pay the loan, and the bond is insolvent, also the property holdings of the parties are insufficient to realize on a deficiency judgment. May the County Court legally compromise the debt without sale of the security for a smaller amount than the loan, or must the court advertise under the school fund mortgage the security and sell same to the highest and best bidder?"

Section 9243 R. S. Mo. 1929 is the statute authorizing the investment of school funds. Said section reads 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, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected

in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, 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."

Section 9246 R. S. Mo. 1929 refers to the collection of school moneys.

"The county treasurer shall collect, or cause to be collected, all school moneys mentioned in section 9243, and all other moneys for school purposes in his county, and shall give the party paying duplicate receipts therefor, and said party shall file one of said receipts with the county clerk, who shall file the same and charge the same to the county treasurer; said clerk shall thereupon credit the bond and mortgage with the amount of said receipt, and when the amount of said receipts is in full of all interest and principal of said bond and mortgage, then the clerk shall satisfy said mortgage of record. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine not to exceed five hundred dollars."

Section 9245 and Section 9254 R. S. Mo. 1929 provide the method and manner of foreclosure in the event debtor has defaulted in his payment of the principal or interest.

The above cited sections of the statutes of Missouri create a trust, so far as said school funds are concerned, of which the county courts are trustees. They have no authority to dispose of the principal entrusted, or any of the interest, other than is prescribed by law. *Veal v. Chariton County Court*, 15 Mo. 412.

The underscored portion of Section 9246 clearly indicates the only condition under which the county clerk can satisfy said mortgage of record. It is clear that a mortgage cannot be satisfied in the absence of full payment of the principal and interest. Foreclosure is the only statutory remedy presented for the enforcement

of the lien of the county, or for the liquidation of said debt. A compromise would be in effect a remission of a portion of the principal and interest, and regardless of the good faith of such action, there is no statutory authority therefor.

To invest the authority of compromise of a debt owing the county to the county court, or any other official, would open the door wide to a great deal of fraud and bad faith. Apparently the legislature was willing to forfeit any benefits of a compromise, believing that it was better to take an occasional loss by legal procedure, rather than a possible greater loss by unfair compromises.

In any event, this office is bound by a strict construction of the statutes in question.

It is, therefore, the opinion of this department that the county court cannot legally compromise the debt in question for a smaller amount than the principal and interest, but rather the court, in the event of non-payment, must foreclose the school fund mortgage strictly in accordance with the statutes.

Respectfully submitted,

COVELL R. HEWITT,  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK,  
Attorney-General.