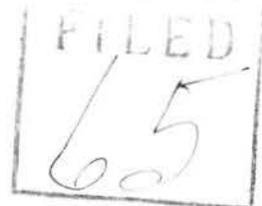


County School Fund:

County Court having foreclosed a mortgage on property on which they have loaned money belonging to the County School Fund and having bid the property in at the foreclosure sale, cannot allow the mortgagor to redeem property by accepting bonds of the Home Owner's Loan Corporation.

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April 6, 1934.



Mr. Robert L. Murphy,
Prosecuting Attorney,
Unionville, Missouri.

Dear Mr. Murphy:-

We have your letter of December 20, 1933, in which was contained a request for an opinion as follows:

"I am writing you for an opinion on the following matter, namely: to see if it is legal for a County Court after they have foreclosed a mortgage on property on which they have loaned money belonging to the County School Fund and have bid the property in at the foreclosure sale, to allow the mortgagor to redeem the property by accepting Government Bonds furnished by The Home Owner's Loan Corporation. I note that under Section 9256 Revised Statutes of Missouri, 1929, that the County Court may become the purchaser at a foreclosure sale of this kind, and may hold and manage this property, but that said Section 9256 also requires that 'as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be resold in such manner and on such terms, at public or private sale, as such court may deem best for the interest of said school or schools, etc.'. It seems from this that it is the intent of the law to allow the court some discretion in the disposition of this property after they bid it in at the foreclosure sale, and if that be true why should they not also have some discretion in allowing the mortgagor to redeem provided it is for the best interests of the school fund.

"It would seem that it would be a good solution of part of the difficulty to allow the mortgagor to redeem and allow the county court to accept Government Bonds as I mentioned above. This is more to be desired than ever at a time like the present when it is very difficult to realize anything like the true value of land.

"I received a letter a few days ago concerning this matter from Hon. Guy P. Allen, District Appraiser for the Home Owner's Loan Corporation, and he stated that he had discussed this matter with you, and that if I would write you you would render me an opinion as to the legality of this proposal."

April 6, 1934.

Section 9256, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 9256. Authority to repossess property by purchase.--* * * * The county court of any county holding property acquired as aforesaid may appoint an agent to take charge of, rent out or lease or otherwise manage the same, under the direction of said court; but as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be resold in such manner and on such terms, at public or private sale, as said court may deem best for the interest of said school or schools; and the money realized on such sale, after the payment of the necessary expenses thereof, shall become part of the school fund out of which the original loan was made."

In our minds the information sought in your letter presents a basic question on which we have already ruled although in this instance the matter is approached from a slightly different angle. We attach herewith a copy of our former opinion.

The discretion of the court mentioned in the pertinent portion of the above quoted section pertains only to the manner in which such land shall be handled or to the manner in which such land shall be sold. The question of medium of payment in case of a sale is quite another matter. As will be noted, in the last few lines of the section, set off by a semi-colon, and apart from the discretion provision, we find the language "and the money realized on such sale", which language clearly shows the legislature to have intended money as the medium of payment. We assume that the term "money" as used therein means "currency, the circulating medium, cash, etc." as defined in Black's Law Dictionary; but even should the term be taken in its broad generic sense as a mere representative of value in effecting exchanges, we could not bring such a transaction as the one proposed in your letter within the purview of the law in question.

The main objection to the proposed transaction lies in another direction. In our earlier opinion, a copy of which is attached hereto, we held that the county court had no right to accept bonds of the Home Owner's Loan Corporation in payment of mortgage indebtedness on loans made out of the County School Fund. The basis of said opinion was that such a procedure was in effect, or actually, an investing of said fund in said bonds and that by the terms of the School Law, and particularly by the terms of the Constitution of Missouri, an investment of such fund in such bonds was forbidden.

Mr. Robert L. Murphy

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April 6, 1934.

For the purposes of this opinion we quote Article XI Section 10 of the Constitution of Missouri, as follows:

"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". (Underlining ours)

In our opinion the identical situation arises here. The investment feature remains the same whether it occurs before foreclosure or after; it is the exchanging of one asset of the fund for some other asset, and the Constitution as well as the statutory sections provide what such latter asset shall be.

We note in your letter you state that at this time it is very difficult to realize anything like the true value of land. This is, of course, true, but under the statutory section above quoted the land need not be sold until such is practicable, and in the interim may be leased or managed by the agent of the court.

The acceptance by the county court of the bonds in question as proposed may seem a desirable solution, but under our Constitution and statutes we are bound to the opinion that it cannot be accomplished.

Very truly yours,

CMHJr:C

CHAS. M. HOWELL, Jr.
Assistant Attorney General

Approved:

Attorney General.