

COUNTY COURTS:

County Courts shall return to county school funds, incomes and rents from properties foreclosed; insurance premiums and incidental expenses to owning said properties to be paid from county school fund.

May 14, 1935.



Honorable Elbert L. Ford
Prosecuting Attorney
Kennett, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"Mr. T. G. Douglass, Superintendent of Public Schools of this County wrote Mr. King, State Superintendent of Schools, relative to the County Court's duty in reference to the income in form of rents, etc. from certain farms and city property the County has acquired by means of foreclosures on County School Fund loans.

"The question Mr. Douglass desires to know is whether or not such rents and incomes from such foreclosures should be used in paying insurance premiums, upkeep and other expenses incidental to the County owning said property or should these rents and incomes be paid or should they be apportioned annually to school districts.

"Mr. King and Mr. Douglass have asked that I request of you an opinion governing this condition. This is rather an important question because during the depression the County Courts over the State have acquired considerable property by reason of foreclosures on school fund loans."

"Please let me have this opinion at your earliest convenience."

We direct you to applicable statutes. Section 9245, R. S. Mo. 1929, provides that the County court shall have jurisdiction of the county school fund arising from any source whatever, which reads as follows:

"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 9243, R. S. Mo. 1929, provides that it is the duty of the several county courts of this State to collect, preserve and securely invest the county school funds, the incomes of which shall be faithfully appropriated for establishing and maintaining free public schools. This 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 9256, R. S. No. 1929, provides that the county court shall have authority to repossess property by purchase in its name or by someone in its behalf; that after having acquired said property, as provided, may appoint an agent to take charge of, rent out or lease or otherwise manage the same under the direction of said court. This section reads:

"Whenever any property heretofore or hereafter conveyed in trust or mortgaged to secure the payment of a loan of school funds shall be ordered to be sold under the provisions of this chapter, or by virtue of any power in such conveyance in trust or mortgage contained, the county court having the care and management of the school fund or funds out of which such loan was made may, in its discretion for the protection of the interest of the schools, become, through its agent thereto duly authorized, a bidder, on behalf of its county, at the sale of such property as aforesaid, and may purchase, take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of the general school funds, the property it may acquire at such sale aforesaid. 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 the case of Morrow v. Pike County, 189 Mo. 610, one Mr. Morrow entered into an agreement with the county court to defend the county regarding two different school funds. The contract provided that he was to be paid a certain amount were he successful in defending the county regarding said school funds and he was. The county court issued a warrant in favor of Mr. Morrow for \$1250.00 to be paid out of any money in the treasury appropriated for any ordinary expenses or rejected Watson fund, and this warrant was cashed by him. Then he later applied for \$1250.00 to be paid out of a permanent fund as per contract. Nothing was done beyond filing of his claim. Then he died. The widow as executrix then sued the county.

In directing from what fund Mr. Morrow should be paid, the court said:

***** It will be seen that the written contract does not provide what fund Mr. Morrow's compensation should be paid from, but such fund is wholly left to be regulated by the application of correct principles of law. The county court, however, did order that it should be paid out of the 'permanent school fund,' thereby meaning either the 'county public school fund,' referred to in Revised Statutes 1899, sec. 9834, or meaning the account which was carried on the county books as the 'permanent fund' of Watson Seminary. It matters little which fund was referred to, for they are precisely the same in contemplation of law, i. e., the permanent fund of Watson Seminary held by the county, which resulted from fines, penalties and forfeitures, since the repealing of 1859, aforesaid, became ipso facto, and eo instanti by that repeal a part of the 'county public school fund.' The county court properly placed the burden of protecting this fund upon the fund itself and this arises from the following propositions; the public school fund does not belong to the county in a technical sense. It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the law-

making power in relation to the fund, (Ray County to use v. Bentley, 49 Mo. l. c. 242); it may not divert the general county revenue to its protection, and, on the other hand, it can not apply the school fund to the payment of ordinary county debts. (Knox County v. Hunolt, 110 Mo. l. c. 75.) But it is fundamental that, conceding the right to make the contract in question, the burden of protecting the trust fund should fall upon the fund itself on well-recognized equitable principles. *****

CONCLUSION.

In light of the foregoing, we are of the opinion that rents and incomes from properties acquired by county court should be returned to the county school fund for apportionment as provided in Section 9357, R. S. Mo. 1929. The act of acquiring such property had its inception by a loan from the county school fund and the county court is charged, under the provisions of the statutes above quoted, with sacredly preserving the incomes from such funds. In this case the rents and incomes from foreclosures belong to the county school fund.

We further conclude that if the payment of insurance premiums, upkeep and incidental expenses be incurred in connection with protecting the principal that had its beginning in the county school fund, such expenses as were necessarily incurred from owning said property by the county court must come from the fund itself.

Yours very truly,

APPROVED:

RUSSELL C. STONE
Assistant Attorney-General.

ROY McKITTRICK
Attorney-General.

RCS/afj