

COUNTY COURTS:

SCHOOL FUNDS:

) Expense of managing and maintaining property  
) acquired under a mortgage given to secure a  
) loan of school money should be paid out of  
) the income of said property.

9-17  
September 13, 1935.

Mr. J. R. Oliver  
County Court Clerk  
Dunklin County  
Kennett, Missouri



Dear Sir:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office.

You state in your letter that recent rulings from this office seem perfectly clear to you and to other officers that the expense of managing and taking care of property which the county has foreclosed and purchased under a deed of trust or mortgage given to secure payment of a loan of school funds should be paid out of the principal school fund instead of out of the income derived from said fund. You no doubt refer to an opinion rendered by this department to Honorable Elbert L. Ford, Prosecuting Attorney at Kennett, Missouri, under date of May 14, 1935. Since rendering said opinion, we have given the matter further consideration and decided to render this additional opinion which is to be taken as superseding and overruling the opinion above referred to.

Section 9243, R. S. Mo. 1929, provides that it is the duty of the several county courts to diligently collect, preserve and securely invest the moneys belonging to a county school fund; the income of which fund shall be appropriated for establishing and maintaining free public schools. That 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."

It will be noted that the above section requires that the school fund shall be secured, invested and sacredly preserved and only the income from said fund is to be appropriated for establishing and maintaining free public schools.

Section 9256, R. S. No. 1929, provides that the county court, through its agent duly appointed, may purchase property sold under mortgage or deed of trust given to secure the payment of a loan of school funds. Said Section provides that the county court may appoint an agent to take charge of, rent or lease or otherwise manage the same under the direction of the court. This section provides further, however, that the property as soon as practicable and when advantageous to the school or schools interested therein shall be resold and the money realized shall become part of the school fund out of which the original loan was made. Said section reads as follows:

"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 any 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 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."

The above section does not provide how the expenses incidental to the management and the upkeep of such property purchased by the county court shall be paid. Neither does the section specifically provide that the rents or other incomes that are derived from said property shall be appropriated to the various schools. However, we think it plain that such rents or other income is income derived from the investment of school funds and should be so appropriated.

The exact question to be decided, as we understand it, is whether the expenses incidental to the ownership of such property should be paid out of rents and the income derived from the property or whether it should be paid out of school fund principal.

As pointed out above, Section 9243 provides that

the money belonging to the school fund shall be securely invested and sacredly preserved. We think it plain that the Legislature intended that this fund should not be expended or diminished for any purpose. The income from such principal is to be apportioned to the various school districts.

The further question arises as to whether the schools are to receive the gross income or the net income derived from the property. 31 Corpus Juris, Section 8, page 402, defines "income" when used with the word "rent" as follows:

"While generally the word 'income' has a different signification from 'net income,' the usual and ordinary meaning of the word, when used alone, may be 'net income;' and, in the ordinary commercial sense, the term may, especially when connected with the word 'rent,' mean net or clear income. \*\*\*\*\*"

Note (b) of said section reads as follows:

"There is some apparent confusion in the authorities respecting the meaning of the word "income," but we think that the word as used in the statute under consideration was intended by the legislature to mean net income. True, the word "income" has been construed to mean gross income or revenue derived from specific property, where from the language of the statute or contract, gross income appeared to have been intended. Seligman in his work on Income Tax says that "income" is to be distinguished from mere receipts or gross revenue; that it is more than that which simply comes in from any economic activity. He further says: "By income is always meant net income, as opposed to gross income. In other words, from the receipts in any enterprise we must, in the first place, deduct the expenses of the enterprise -- that is, the outlay incurred in securing the gross product." Niland v. Niland, 154 Wis. 514, 517, 143 N.W. 170, Ann. Cas. 1915B 1127."

Bouvier's Law Dictionary, (Rawle's Third Revision), page 1527, gives the following definition of "income":

"Income. The gain which proceeds from property, labor, or business. It is applied particularly to individuals. The income of the state or government is usually called revenue. The word is sometimes considered synonymous with 'profits,' the gain as between receipts and payments; People v. Board of Supervisors, 4 Hill (N. Y.) 23; 'rent, and profits,' 'income,' and 'net income' of the estate are equivalent expressions; Andrews v. Boyd, 5 Greenl. (Me.) 203; it may mean 'money' or the expectation of receiving money; U. S. v. Schillinger, 14 Blatch. 71, Fed. Cas. No. 16,228; Gray v. Darlington, 15 Wall. (U. S.) 63, 21 L. Ed. 45; and a note is ground for expecting income, and in the sense of a statute taxing incomes the amount thereof is to be returned when paid; Portland Co. v. U. S. 15 Wall. (U. S.) 1, 21 L. Ed. 113. See Simpson v. Moore, 30 Barb. (N. Y.) 637. In the ordinary commercial sense 'income' especially when connected with the word 'rent,' may mean clear or net income. \*\*\*\*\*"

#### CONCLUSION.

In view of the above, it is the opinion of this department that the expenses incidental to a county owning property purchased under a mortgage or deed of trust given to secure a loan of school moneys should be paid out of the income derived from said property. After deducting said expenses, the balance or net income, if any, should be appropriated by the county court for the purpose of establishing free public schools.

Yours very truly,

APPROVED:

J. E. TAYLOR  
Assistant Attorney-General.

JOHN W. HOFFMAN, Jr.  
(Acting) Attorney-General.

JET/afj