

COUNTY COURT:)
SCHOOL FUNDS:) Costs or expenses necessary to preserve county
school fund to be borne from that fund.

June 28, 1935.



Hon. Paul C. Sutton
Clerk of the Iron County Court
Ironton, Missouri

Dear Sir:

This is to acknowledge your letter dated June 27, 1935, as follows:

"The County Court has foreclosed on some School Fund Mortgages in this County and appointed me as agent to bid the land in for the protection of the School Funds.

"Now the question arises in regard to, what fund the costs of these sales should be paid from, when I bid the property in for the Court."

It is our opinion that the costs incurred by reason of the sales mentioned in your letter (i. e., in which the county bids in the land), should be paid from the "County School Fund", and as authority we rely on Sections 9245, 9248 and 9254, R. S. No. 1929, and court decisions.

Section 9254, R. S. No. 1929, provides in part as follows:

"Whenever the principal and interest, or any part thereof, secured by mortgage containing a power to sell, shall become due and payable, the county court may make an order to the sheriff, reciting the debt and interest

to be received, and commanding him to levy the same, with costs, upon the property conveyed by said mortgage, * * * * ."

In *Morrow v. Pike County*, 189 Mo. 610, the Supreme Court of Missouri, in dealing with a similar question, said the following (l. c. 621-622):

"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. 9824, 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 act 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 lawmaking 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. And so it has been held by this court. For example, Township Board of Education v. Boyd, 58 Mo. 279, was a case of this sort."

And further (l. c. 623):

"Whereupon another suit was instituted in the name of Washington county to recover the sum of money so paid from the members of said county court (Washington County v. Boyd, 64 Mo. 179), and it was held that the plaintiff could not recover. It was said, among other things, that the court was a mere agent of the State for the management of a trust, and that, 'It is authorized to sell lands, to lease them, to receive and sue for the purchase money, and if there be danger of loss of a debt contracted for the purchase of these lands, the court, we think, might resort to those extraordinary remedies provided for creditors generally. * * * * *

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As careful and honest agents they will guard the interests of their principal as if the property were their own, and as long as they are actuated by an honest purpose to subserve that interest, to hold that they must answer, out of their own means, for any costs or expenses honestly incurred in the endeavor to protect that interest, would tend far more to jeopardize these funds than to hold them entitled to remuneration for such outlays when they have been judiciously and honestly made.'"

And further (l. c. 624):

"The direction of the county court in the entry complained of that the expense

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of preserving the integrity of the school fund held in trust should be placed as a burden upon the fund itself, instead of making the contract illegal, in our opinion, placed the burden directly where it belonged, and had that provision been in the written memorandum signed by Morrow, it would not have rendered the contract invalid."

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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

JLH:EG