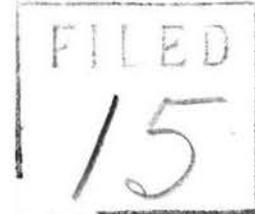


SCHOOL FUNDS:

County court has right, absent fraud, to sell property acquired through foreclosure of school funds if such be the most advantageous to the school or schools interested therein.

October 24, 1936.

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Honorable T. O. Carver
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Mr. Carver:

This is to acknowledge your letter as follows:

"Recently the County Court of this County caused to be foreclosed a number of School Fund Mortgages. A number of the mortgages had considerable accrued interest and in some cases the amount owing on principal and interest was more than the farms are now worth as the loans were made back when farm land commanded a better price and value.

"The county bought or bid in a number of farms for the amount owing and now have the farms on their hands, at a price greater than the value of the farms.

"They asked me if they had the right to sell the farms or any part of them for less than the amount they bid them in for, and to accept a substantial down payment and accept a mortgage on the balance owing on the selling price.

"I told them that in my opinion as financial agents of the County's business affairs that they had the right to do so so long as they obtained a fair and reasonable value for the farms based on present values. That

the matter should be handled according to the dictates of good business judgment.

"They asked me to obtain your official opinion on the matter so will you kindly furnish me with an opinion on the above matter at your earliest convenience."

The Supreme Court of Missouri in *Veal v. Chariton County Court*, 15 Mo. 412, 414, at an early date (1852), in speaking of the relationship of the county court to the school funds, said:

"In relation to these funds, the county courts are trustees. They have no authority to dispose of the principal entrusted, or any of its interest, otherwise than is prescribed by law."

See, also: *Montgomery County v. Auchley*, 103 Mo. 492; *Lafayette County v. Hixon*, 69 Mo. 581.

Section 9248, R. S. Mo. 1929, places the management of school funds in the county courts of the respective counties. Section 9254, R. S. Mo. 1929, gives the county court authority to sell the property when the principal and interest, or any part thereof, remains unpaid. Section 9256, R. S. Mo. 1929, authorizes the county court to repossess the property by purchase, and in part provides 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 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, * * * * *

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;
* * * * *."

From the above provisions of the statute it is to be noted that the county court has the power to protect school funds even to the extent of becoming the purchaser in the event of foreclosure.

Although the county may become the purchaser of property foreclosed under a school mortgage, yet it was never intended that the county should remain the owner of the property, as Section 9256, supra, specifically provides that the county court should dispose of the property as soon as practicable "and in the judgment of said court advantageous to the school or schools interested therein." However, the county court is not permitted to sell property acquired through foreclosure unless such sale would be advantageous to the schools. In other words, the county court could not use the means and method of satisfying a school fund mortgage by causing the property to be foreclosed and the full amount of the loan bid in order to acquire the property, and then turn around and sell the property at a much less figure back to the original owner of the property. In other words, county courts are trustees and if any fraud, collusion, or connivance on their part is evidenced in satisfying school mortgages by the procedure of foreclosing and bidding in the

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property at the amount owing, and then reselling said property at a lower figure, said transaction would be voidable.

It is our opinion that, absent fraud, the county court has the power and authority under Section 9256, supra, to sell property acquired through foreclosure of school fund mortgages if such sale, in the judgment of the county court, is the most advantageous to the school or schools interested therein.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

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

JLH:EG