

SCHOOL FUNDS: Property sold to satisfy school fund mortgages, when securities are insolvent should be handled as outlined in Sec. 9256, R.S. Mo. 1929.

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February 28, 1936.



Honorable Roy L. Kay,
Prosecuting Attorney,
Moniteau County,
California, Missouri.

Dear Sir:

This department is in receipt of your letter of February 8 in which you request an opinion relating to school fund mortgages. Your letter is as follows:

"Moniteau County, like a great many other counties, during the time when land was high and the average citizen could raise several hundred dollars, made school loans on real estate. Since then, the Court has had to close out several of the loans made by advertising under the school fund mortgages, and the land sold did not bring the amount of the loan. Also, the securities have become insolvent, and a judgment against them would be valueless. In this case would you advise the spending of money to get a judgment which can not be collected?

"The sureties on these bonds have not taken the bankrupt law nor made an assignment for the benefit of creditors, yet the court knows fully that their exemptions would more than consume their entire estates.

"In the event you should hold that a suit would, under the circumstances, be useless, how would you advise the court to meet such situation?"

It has always been the duty of the county court with respect to school funds to guard the same zealously, using extreme care in making loans. Section 9250, R.S. Mo. 1929 specifies the rate of interest that may be exacted on school fund loans, and Section 9251 permits the county court to make loans only on lands which are free from encumbrances, the land to be of a value double the amount of the loan; in addition, it requires a bond to be given, usually by two citizens of the county who must own property assessed in an amount equal to the loan.

Section 9253, R.S. Mo. 1929 authorizes the county court to require additional security from time to time.

It appears from your letter that the county court of your county has exacted from the mortgagors proper bonds, but has never exacted any additional security. However, we assume that your county, like many other counties, has been subjected to the devaluation of land during the depression, bringing misfortune to many of its citizens, and as a result the loans exceed the value of the land in many instances.

Section 9256, R.S. Mo. 1929 authorizes the county to become a purchaser or bidder when land is foreclosed under a school fund mortgage, and is 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, 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."

CONCLUSION

In view of the fact, as stated in your letter, that the sureties on the bonds to your actual knowledge are insolvent and a judgment would not be availing in the way of obtaining additional funds, and that a deficiency judgment would be valueless, it is our opinion that Section 9256, supra, giving the county court power to repossess property by purchase, was designed primarily to take care of such a situation as you have outlined.

We are of the opinion that there is no liability on members of the county court providing they have done all in their power to preserve the school funds and there is no evidence of fraud, if the deficits are not reduced to judgment.

As to advice to the court in meeting the situation, it is our opinion that the county court should follow the provisions of Section 9256, supra, especially that portion of said section which states "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".

Respectfully submitted,

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APPROVED:

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