

SCHOOL FUNDS:) Counties not permitted to borrow moneys from school
) funds.
COUNTY COURTS:) County Courts must loan school funds as provided by
) statute.

October 15, 1936.

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Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

This is to acknowledge receipt of your letter of October 9, 1936, in which you request the opinion of this Department on the questions submitted in your letter which is as follows:

"The County Court has the plan of using common school fund, the town school fund, the township school fund, and the state school fund, and the surplus in the road and canal fund to purchase 1936 warrants with. In other words these surplus funds are to be used to purchase county warrants for 1936, and thus draw 6% interest for the benefit of the funds.

"The Court reasoned this way; that they have custody of the money and must see that it earn a fair rate of interest. They were paying out 6% on their county warrants. They want to pay out the money, and substitute county warrants.

"It seems that school funds should be loaned with prime real estate security, worth twice the amount of the loan, and with a personal bond. How else can the county borrow the money?"

"Can the County Court borrow the school funds and put in their place the county warrants in all class for the year 1936?"

We have duly considered the plan suggested in your letter for the handling of the various school funds by the county court. In Sections 9243-9256, R. S. Mo. 1929, the provisions for the handling of the school funds by the county court are set forth. In said statutes we find no provision which would permit the county court to handle or loan the funds in the manner as suggested by your letter. Where a statutory plan for the handling or loaning of public funds is provided by the statute, public officials are not permitted or allowed under the law to adopt any other course than outlined by the statute, and they must strictly follow the statutory plan.

It will be observed that by the statutes mentioned above the county court is given jurisdiction to handle and loan the various school funds and the statutes outline with particularity the method by which these funds may be loaned, the rate of interest, the kind of security, the value of the security, the terms, the bond to be given - all are provided; and they further provide the method by which same may be collected, and the school fund mortgage may be foreclosed in the event of default, all of which must be strictly followed by the county court. It must be remembered that the county court in handling these funds, as other public officials, are trustees and must follow the statute with relation to same.

The Supreme Court of Missouri in the case of Montgomery County v. Auchley, 103 Mo. 492, announced the rule that county courts, being trustees of these funds, that the terms of the trust prescribing the methods of handling same must be strictly followed and the court cannot deviate from the methods outlined in the statutes.

The Supreme Court said in the case of Saline County v. Thorp et al., 337 Mo. 1140, 88 S. W. (2d) 183, l. c. 186:

"Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that everyone dealing with them must take notice of those limitations."

Hon. G. Logan Marr

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Oct. 15, 1936.

The intention of the county court might be commendable, but we find no authority for it to handle said funds other than as provided by the statutes. It is therefore our opinion that your county court is not permitted under the law to adopt the plan set forth in your letter.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

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