

COUNTY COURTS: Authorized, by order, to pay real estate commission for sale of lands repossessed by purchase under section 9256, 1929 statutes, if they deem such order best for the interest of said school district or districts. Commission must be paid from the funds of such school district or districts.

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Mr. Edwin C. Orr
Prosecuting Attorney
Columbia, Missouri

Dear Mr. Orr:

This office is in receipt of your request for an opinion as follows:

"I have been asked by the County Court for an opinion upon this question: Can the County Court pay a real estate commission for the sale of lands which belong to the county, and which have been acquired through foreclosure of loans made from the county school fund?

I have looked at Section 9256 R. S. 1929, page 7104, R. S. Ann., where it says:

'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. (R.S. 1919, p. 11178.)'

which in my opinion gives the County Court the authority to employ a real estate man to sell its school fund property if it sees fit to do so. In so far as there are no cases directly in point in this state that I have been able to find, the court desires your opinion on the question, which I would appreciate very much myself.

In my judgment the statute itself is sufficient authority for the payment of the commission for the sale of the land but in addition to that the cases dealing with trustees universally hold that the trustee in charge of real estate may pay real estate commissions or other necessary expenses in selling land, and the Missouri law on school funds enables the county court to hire attorneys to protect the fund and to do such other things as may be necessary in the judgment of the court to preserve the school fund, therefore, in my judgment there is no question but what the county court has the authority to pay a real estate commission for the sale of its lands."

As we understand your inquiry you ask for an interpretation of that part of Section 9256 R. S. Missouri 1929, as hereinabove quoted in your letter.

We are unable to find a decision construing the quoted part of the above statute.

The Supreme Court in the case of Morrow vs. Pike County, 189 Mo. 622, recognized the right of the County Court to employ counsel to aid in protecting a public school fund in the following excerpt:

"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 law-making power in relation to the fund (Ray County to use vs. 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 vs. 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 shall fall upon the fund itself on well-recognized equitable principles."

In that case there was no claim that there was any statute which expressly gave the county court power to employ such an attorney in such capacity but the court held that the county court had implied authority to order such expenditure to protect the funds of the school district and further held that the payment for such services must be made from the school funds.

In the case of Township Board of Education vs. Boyd, 58 Mo. 276, the county court was trustee for the care and management of the school fund of the township. It instituted certain injunction proceedings for the protection of the fund and gave an injunction bond signed by J.K. Boyd and J.B. Johnson, two of the justices of the county court. Upon dissolution of the injunction a judgment was issued against said obligors, one of whom, paid the same, and by a court order he was reimbursed out of the township school fund. In this case the court said:

"The County Court was a trustee for the 'care and management' of the school fund of the township. In this capacity, and in the exercise--for aught that appears to the contrary--of its soundest judgment and discretion, it instituted certain injunction proceedings for the protection of the fund. The law required personal security for the purpose, which was given. A judgment against

the surety following, which judgment he was bound to pay, and did pay, it would be strange if the law should refuse to indemnify him from the interest which his suretyship had so served at a sacrifice."

There being no statute giving the county court, as trustee for the public and township school funds, the power to pay a real estate commission for the sale of real estate repossessed by the county court and purchased (for the use of the township, out of the school fund of which the loan was made, or in its own name where such loan was made out of the general school fund), the question is, whether said court would have such implied power as is necessary to carry out or make effectual the purposes of the authority expressly granted.

The county court may under said section

First, appoint an agent to take charge of, rent out, lease or otherwise manage the property under the direction of the county court;

Second, resell said property as soon as practicable and advantageous to the school or schools' interested therein, and to make such resale in such manner and on such terms at public or private sale, as said court may deem just for the interest of said school or schools.

A trustee or agent always has the implied right to protect the corpus of the property or funds under their control and in this case the court would have the right to take necessary steps to enjoin the stealing of timber from valuable wooded land belonging to a school district and not rely on the criminal statutes for a remedy; to employ an attorney to replevy timber wrongfully taken from such premises and the like.

In the case of Lincoln County vs. Magruder, 3 Mo. App. 14, the County Court brought a suit of ejectment for the possession of land which had been bid in and purchased by said court, for the use of the townships whose school funds were secured by the mortgage. The Court held:

"We see no reason why the County of Lincoln should not bring ejectment for real estate which it owns and holds and in which it is entitled to possession."

The County Court as trustee of school lands, being given the right to sell such lands by statute certainly has the implied right to use its soundest judgment and discretion in employing an agent to affect the sale of such lands and pay him a commission therefor if they believe it to be to the best interest of such school district or districts.

CONCLUSION

It is therefore the opinion of this Department that the County Court may, by order of Court, pay a real estate commission for the sale of lands repossessed by purchase under Section 9256, R.S. Missouri 1929, if in the exercise of its discretion it deems such order best for the interest of said district or districts, but such commission must be paid from school funds.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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