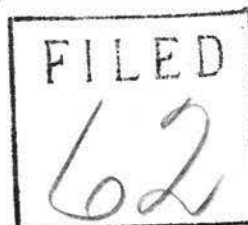


COUNTY COURT ) County Court may not abandon compound  
                  ) interest thereon and accept simple in-  
SCHOOL FUND LOAN) terest in lieu thereof.

---

January 20, 1938

1-21



Hon. W.L. Mitchell  
Judge of County Court  
Carroll County  
Bosworth, Missouri

Dear Sir:

This department is in receipt of your letter of January 3, 1938, in which you request an opinion as follows:

"I would be pleased if you would give me a legal opinion in regard to whether the County Court has the right to compromise interest on County School Loans.

"These notes are written interest payable yearly and if not so paid to be compounded at the same rate of interest.

"Have we the right to accept straight simple interest as a compromise."

Section 9243, R.S. Missouri, 1929, is in part as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent. per annum, on unencumbered real estate

security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund;"

Section 9250, R.S. Missouri, 1929, is as follows:

"Whenever there shall be in the county treasury any money belonging to the capital of the school fund of any township therein, the county court of such county shall loan the same for the highest interest that can be obtained, not exceeding eight nor less than four per cent. per annum, upon conditions and subject to the restrictions hereinafter set forth."

The two above sections make the county courts of the several counties trustees of the county school fund and the township school fund.

Section 9251 provides the manner in which township funds shall be invested. By Section 9245 the county school fund is required to be invested in the same manner and under the same rules and regulations that apply to the township school fund. Section 9251 is in part as follows:

"When any moneys belonging to said funds shall be loaned by the county courts, they shall cause the same to be secured by a mortgage in fee on real estate within the county, free from all liens and encumbrances, of the value of double the amount of the loan, with a bond, \* \* \* \* \*  
\* \* \* \* \* the bond shall \* \* \* \* \*  
specify the time when the principal is payable, rate of interest and

the time when payable; that in default of payment of the interest, annually, or failure by principal in the bond to give additional security when thereto lawfully required, both the principal and interest shall become due and payable forthwith, and that all interest not punctually paid shall bear interest at the same rate of interest as the principal."

In State ex rel. v. Johnson, 138 Mo. App. 1.c. 314, it is said:

"The county courts of Missouri are creatures solely of statutory origin and have no common law or equitable jurisdiction."

Also, being solely of statutory origin, said courts have only the authority to do what is permitted to be done by the statutes. Montgomery County v. Auchley, 103 Mo. 492. We find no statute authorizing the county court in any manner to compromise the interest due on a school fund loan.

This question has been before the courts of this state in the case of Montgomery County v. Auchley, 103 Mo. 492, 1.c. 503, where it said:

copy 24

"In Veal v. County Court, 15 Mo. 412, the county court had loaned school funds at ten-per-cent. interest, and afterwards, on the petition of the inhabitants of the township to which the funds loaned belonged, the court reduced the rate of interest to six per cent. This court held that this order reducing the interest was illegal, and Judge Scott, in referring to these funds and the nature of the trust assumed by the county courts, in regard to them, said: 'In relation

to these funds the county courts are trustees. They have no authority to dispose of the principal intrusted, or any of its interest, otherwise than is prescribed by law. There is no difference in this respect between the principal and interest of these funds. If they can give away the one, they can give away the other. \* \* \* The welfare of the state is concerned in the education of the children. She has provided and is providing means for that purpose, not only for those now in existence, but for those who may come after them. The fund, as has been said, is a permanent one, and, if every man, woman and child in a township should petition the county court to give away, that which is by law intrusted to it for the education of its children, it should without hesitation reject their prayer."

The compound interest which may become due on a school fund loan is as much a part of the principal as in the simple interest and under the Auchley case, supra, the court has no authority to dispose of the same, otherwise than is directed by law, i.e., to collect it when it becomes due.

#### CONCLUSION

Therefore, it is the opinion of this department that the county court has no authority to accept less than is actually due on a county or township school fund loan, and may not abandon compound interest due thereon and accept simple interest in lieu thereof.

Respectfully submitted,

APPROVED by:

AUBREY R. HAMMETT  
Assistant Attorney General

J.E. TAYLOR (Acting) Attorney General

LLB:VAL