

COUNTY COURTS: School Fund Mortgage. County Courts have no authority to accept a deed to lands, on which there is a mortgage with bond, in full satisfaction of such mortgage and bond.

March 4, 1939.

Honorable Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri



Dear Mr. Englehart:

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

"It is provided in Section 9254 R. S. Mo. 1929, Page 7103 Ann. St. that, 'whenever the principal and interest, or any part thereof, secured by mortgage containing a power to sell, shall become due and payable, the County Court may make an order to the Sheriff, reciting the deed and interest to be received, and commanding him to levy the same, with costs, upon the property conveyed by said mortgage, which shall be described in said Mortgage'.

"It is further provided under Section 9256 above, that the County Court may appoint an agent to become a bidder at a foreclosure sale of property under school fund mortgage. Does the County Court have authority to accept the property described in a school fund mortgage, by deed from the mortgagor in complete and final satisfaction of the indebtedness, without a sale as provided in Section 9254 above?

"As the County Court is a creature of the statute and all authority which it may exercise must be given by the statute, I can find no authority for a County Court

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to accept a deed for property described in a school fund mortgage, in complete and final satisfaction of the mortgage.

"The County Court of this County will convene on March 6, 1939, and I would appreciate an answer from you in reply to this inquiry on or before said date."

Section 9251 R. S. Mo. 1929 provides that, when any moneys belonging to the Capital of the school fund of any township shall be loaned by the County Court of the County wherein such township is located, such Court 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, and may, if they deem it necessary, also require personal security on such bond; * * * "

Section 9252 R. S. Mo. 1929, providing the form of mortgage and notice of sale of such lands is as follows:

"Every mortgage taken under the provisions of this chapter shall be in the the ordinary form of a conveyance in fee, shall recite the bond, and shall contain a condition that if default shall be made in payment of principal or interest, or any part thereof, at the time when they shall severally become due and payable, according to the tenor and effect of the bond recited, the sheriff of the county may, upon giving twenty days' notice of the time and place of sale, by publication in some newspaper published in the county,

if there be one published, and if not, by at least six written or printed handbills, put up in different public places in the county, without suit on the mortgage, proceed and sell the mortgaged premises, or any part thereof, to satisfy the principal and interest, and make an absolute conveyance thereof, in fee, to the purchaser, which shall be as effectual to all intents and purposes as if such sale and conveyance were made by virtue of a judgment of a court of competent jurisdiction foreclosing the mortgage. In all cases of loan of school funds in the various counties, the expense of drawing and preparing securities therefor, and of acknowledging and recording mortgages including the fees of all officers for the filing, certifying or recording such mortgages and other securities, shall be paid by the borrowers respectively."

Section 9254 R. S. Mo. 1929 providing for the County Court to make an order of sale when the debt becomes due and payable, is as follows:

"Whenever the principal and interest, or any part thereof, secured by mortgage containing a power to sell, shall become due and payable, the county court may make an order to the sheriff, reciting the debt and interest to be received, and commanding him to levy the same, with costs, upon the property conveyed by said mortgage, which shall be described as in the mortgage; and a copy of such order, duly certified, being delivered to the sheriff, shall have the effect of a feri facias on a judgment of foreclosure by the circuit court, and shall be proceeded with accordingly."

Section 9256 R. S. Mo. 1929 providing that the County Court has authority to reposses the property by purchase whenever the same is sold under and by virtue of court order or "by virtue of any power in such conveyance in trust or mortgage contained", 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 there-to duly authorized, a bidder, on behalf of its 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."

Therefore, the County Court as trustee for such fund

has the statutory power to purchase such lands under foreclosure proceedings, but we find no statutory provision expressly empowering said trustees to accept a deed to lands, on which there is a school fund mortgage with bond, in satisfaction of such mortgage and bond.

In the case of Morrow vs. Pike County, 189 Mo. 622, the court held:

" * * * It is a trust fund, and the County Court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund * * * "

In the case of Montgomery County vs. Auchley, 103 Mo. l. c. 505, on the question of what constitutes payment on a school fund bond, the court says:

" * * * If a note is taken in payment of such loan, the security must be approved by the County Court, and must conform to the statutory requirements, before it can operate as a payment. Here there is no pretense that any real estate security was taken for the note * * * " (Under-scoring ours)

In the case of Lafayette County vs. Hixon, 69 Mo. 581, 582, after stating the powers and duties of a County Court as to the school fund, holds that the County Court may substitute a new mortgage upon the following condition:

" * * * We see no reason, however, why one security may not be substituted for another, when the convenience of the parties may require it and the change can be made without detriment to the school fund. * * * " (Under-scoring ours)

The County Court in your case is assuming to satisfy a school fund mortgage by acceptance of a deed to the mortgage land.

The question arises, is the land worth the amount due under the mortgage and bond together with interest thereon. When the loan was made the land should have been worth twice the amount of the loan.

If the land were sold under the statutory procedure and brought less than the amount of principal and interest due, could anything be realized on the bond? Would the bondsmen, although insolvent at the time of the sale of the land, not become solvent within the time of limitation of such bond?

This fund is designated by many decisions as a sacred trust fund and every effort should be made by the County Court to prevent its dissipation.

On the question of a release of such fund in the case of Saline County vs. Thorpe, 88 S. W. (2d), 183, 186, the court says:

" * * * The purpose of requiring a bond and personal security is, of course, to make it possible to collect the debt even if the land, securing the loan, decreases in value. The county court has no authority to give any right of the county to collect either principal or interest due (Veal v. Chariton County Court, 15 Mo. 412), or to dispense with either the bond, with its personal obligation to repay the money, or the mortgage conveying clear land as security. Lafayette County v. Hixon, 69 Mo. 581. Neither does it have authority to release a surety from his liability upon the bond or to take in payment of the amount due or any part thereof, upon a school fund bond and mortgage, a note which does not conform to the statutory requirements. Montgomery County v. Auchley, 103 Mo. 492, 15 S. W. 626. Why should it have any authority to release one who borrowed from this fund from his obligation to repay it? Equity will

even act in advance by injunction to prevent the illegal application of public money by public officers; why should it not act to prevent the loss of a sacred trust fund, under the circumstances here? If a county court could release the obligation to repay school fund loans, at its own whim or pleasure, for any statute to safeguard the public school funds by requiring double security of unencumbered land, in every loan, would be nullified. School funds could be rapidly dissipated by excessive loans, from the payment of which the persons who obtained the funds, or agreed to be security for them, would be released by accepting conveyances of land worth less than the amount loaned. Certainly this would result if such releases were made in consideration of the conveyance of land subject to other encumbrances. The county court should not be permitted to accomplish by indirection something which it is prohibited from doing directly."

CONCLUSION

It is the conclusion of this department that the County Courts, as to Capital school funds of this state, are mere trustees and, as such, have no authority to accept a deed to lands on which there is a school fund mortgage with bond, in full satisfaction of such mortgage and bond.

Respectfully submitted,

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APPROVED:

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