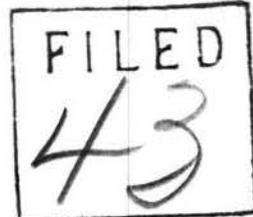


SCHOOLS:

County courts must either collect the amount of a school fund mortgage or foreclose such mortgage.

May 16, 1939

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Mr. Henry B. Hunt
Prosecuting Attorney
Atchison County
Rock Port, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the following facts and question:

"Some years ago Mrs. Emma Walkup took over a school loan and assumed the payment of the mortgage relating thereto, and in addition to said security, she gave as collateral security, a deed of trust on her undivided one-fourth interest in and to some real estate lying in the southeast part of this county; her said undivided interest amounts to about thirty acres of land, which is subject to a life estate.

"As the interest has mounted on this land, the County Court in due form of law gave notice of foreclosure on the first deed of trust. Mrs. Walkup has come forward with a proposition that if the County Court will release the collateral security she can borrow enough money on her undivided interest in said land to pay a year's interest amounting to \$402.00. The County Court

deems that they can get more benefit from this collateral security by her proposed method than to foreclose the same in due time and trust to the amount secured by foreclosure sale."

Your question in the final analysis resolves itself into this--has the county court authority to proceed in the collection of school moneys in any manner other than that provided by the statutes?

In our search through the opinions written by this department we find that this office, on August 24, 1938, by an opinion written by Honorable W. J. Burke, Assistant Attorney General to Honorable Glen W. Huddleston, Prosecuting Attorney, Carroll County, Carrollton, Missouri, covered the question you have submitted to a certain extent. In that opinion Mr. Burke sets out the powers and duties of the county court with respect to county school funds and held in that opinion that the county court was not authorized under the Missouri statutes to compromise or extend a loan as provided under the Frazier-Lemke Act. We are enclosing a copy of this opinion for your information.

While we think Mr. Burke's opinion fairly covers the question which you have submitted we note another section of the statutes which would indicate that the county court must follow the provisions of the statutes as to collecting the amount of the money loaned together with interest thereon or to foreclose the loan, that is Section 9256, R. S. Missouri 1929. This section provides 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."

It will be noted that after the county court has repossessed land under foreclosure it cannot then exercise its jurisdiction with respect to the disposition of such lands. In other words, the county court is authorized to dispose of lands which it has bought under the foreclosure of school fund mortgages and use its judgment as to what would be the most advantageous for the school or schools interested in the property.

In your request it appears that the security which the parties wish to release is collateral security.

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We assume that this collateral security was demanded and given in accordance with the provisions of Section 9253, R. S. Missouri 1929, which are as follows:

"The county court shall have power, from time to time, to require additional security to be given on said bond when they, in their judgment, deem it necessary for the better preservation of the fund. If such additional security be not given within ten days after an order to that effect shall be made and served on the principal in the bond, and in all cases of default in the payment of interest, the court shall proceed to enforce payment of both principal and interest by writ, or in a summary manner, as provided in this chapter."

Under some circumstances an individual or a body, other than the county court, in handling school funds, might be justified and authorized in releasing collateral security, but the Missouri statutes do not seem to make an exception to the rule requiring the county court to either collect the principal and interest or foreclose. Therefore, we think the same rule would apply to the collateral security as applies to the principal security.

CONCLUSION.

From the foregoing it is the opinion of this department that the only course for the county court to follow in handling this loan is to either collect the amount of principal and interest due or to foreclose the loan and the collateral.

Probably the proposition which has been submitted to the court in this case would be to the best advantage of the school fund, but as said in *Montgomery County v. Auchley*, cited in the *Burke* opinion the county court must follow the statute regardless of whether or not to do otherwise would be more advantageous to the funds

Mr. Henry B. Hunt

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secured, and we are further of the opinion that the only time that the county court may exercise its discretion in the handling of this school fund is after it has foreclosed the school loan as is provided by Section 9256, supra.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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