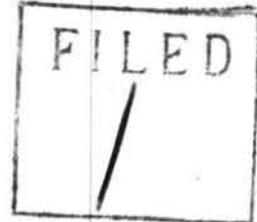


SCHOOLS: County Court cannot discount or compromise a loan made out of the school funds.

April 23, 1940

Mr. A. R. Alexander  
Conciliation Commissioner  
Clinton County  
Plattsburg, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated April 12, 1940, which reads as follows:

"Our prosecuting Attorney, Mr. D. E. Bennett, of Clinton County, tells me that some weeks ago he asked the opinion of your office concerning the power of the County Court to assent to a compromise settlement of a school fund loan, when the debtor had filed a petition in the Federal Court under Section 75 of the Bankruptcy Act - the section providing for Farmer Relief.

In this connection it was understood that he should invite your attention to the latest decision of the United States Supreme Court upon that section, namely in the case of Kalb et Ux vs. Feuerstein et Ux, 60 Supreme Court Reporter, page 343.

Mr. Bennett tells me your opinion has not yet reached him. I happen to be interested in your opinion because I am the Conciliation Commissioner before whom the hearings are held.

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"The real question is: Can the County Court consent to a Composition or Extension of time as to an overdue school fund loan, when the debtor has sought relief under said Section 75 of the Bankruptcy Act, as all other creditors may?

In view of the intentions of said Section 75, and in the light of the Kalb decision, supra, and other decisions, I had thought the County Court might do so, but I feel that your opinion may be clarifying as to the doubt that has arisen, and as the Creditor's Meeting has been adjourned to April 22nd, I am hopeful that your opinion may be supplied at an early date."

I am enclosing an opinion rendered by this office on August 24, 1938, to Honorable Glen W. Huddleston, Prosecuting Attorney of Carroll County, Carrollton, Missouri. In that opinion we held that the county court cannot discount or compromise a loan made out of the school funds.

In your request you mention the case of Kalb et ux v. Feuerstein et ux., etc., 60 Sup. Ct. Rep., 343, l.c. 348. In that case the court said:

"The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Walworth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress. Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution

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of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property -- to the extent based upon the court's actions -- were all without authority of law. Individual responsibility for such unlawful acts must be decided according to the law of the State. We therefore express no opinion as to other contentions based upon State law and raised by appellees in support of the judgments of the Supreme Court of Wisconsin."

This case merely holds that state laws cannot be enforced which violate the Frazier-Lemke Act. This case does not effect our previous opinion, but, under Section 9243 R. S. Missouri, 1929, which is set out in our previous opinion, it will be noticed that it specifically is stated that "it is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest \* \* \* ." In order that the county court can preserve a school loan, it will be necessary that where the mortgagor has taken advantage of the Frazier-Lemke Act the county court would not be violating Section 9243, supra, by extending the loan even though due. The county court, by extending the loan would be preserving the loan, which would be a first mortgage on the farm in question after a full settlement in the bankruptcy court. This loan would be a preferred account in the bankruptcy court. Under the enclosed opinion the county court could not compromise the loan even though the compromise would bring more money than if the farm was foreclosed at a later date.

#### CONCLUSION.

In view of the foregoing authorities, and enclosed opinion, it is the opinion of this department that the

Mr. A. R. Alexander

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county court may extend a loan which is past due when the mortgagor has taken advantage of the Frazier-Lemke Act.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

WJB:RW