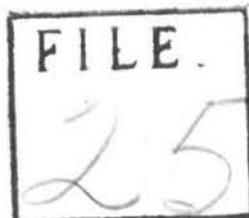


SCHOOLS: County court cannot invest school funds in United States securities.

January 14, 1942

Honorable David A. Dyer
Prosecuting Attorney
St. Charles County
St. Charles, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this office under date of January 7, 1942, which is as follows:

"I am requesting the opinion of your office on the question of the power, if any, of a County Court to invest county school fund moneys in securities of the United States of America or of the State of Missouri, such investments to be made by the Court not on the theory that they are to be permanent investments but only a temporary means of securely investing large sums of school moneys so that such sums may be slowly and conservatively loaned out on real estate owned by residents of the county.

"It happens that at the present time the school funds of this county are not all loaned up. There is considerably over \$100,000.00 of such moneys in the office of the Treasurer. In these times it is not only difficult to obtain first class real estate loans coming to only one-half of the value of the property on which the loan is taken but also the burden on the Prosecuting Attorney of reading the abstracts for the number of loans necessary to place such sum at work is extremely burdensome. Accordingly, the Court has asked me if they have the power to invest some money in securities of the type

mentioned, always keeping enough money available to make the local real estate loans that meet the requirements.

"I am not aware of any express statute that does give the County Court such right of investment but it is certainly true that they are the conservators of these funds and it strikes me they might have the implied power in the situation I have endeavored to sketch out above to make such investments for the ultimate safe-guarding of the funds available.

"In requesting this opinion I am not forgetting that the County administers two different funds, the one being the township capital funds dealt with in Section 10383 and the following sections of the Revised Statutes of Missouri, 1939, and the other being the County school funds dealt with at Section 10376. An opinion as to the Court's powers with reference to one of the funds would, as I read the statutes, control their powers as to the other.

"Will you kindly furnish me with your opinion on this question?"

Section 10, Article XI of the Constitution of Missouri provides as follows:

"All county school funds shall be loaned only upon unencumbered real estate security of double the value of the loan, with personal security in addition thereto."

Sections of the Constitution are limitations on the powers of the Legislature and under Section 10, the Legislature is not empowered to enact any laws which would allow the school funds to be invested in anything but in loans upon unencumbered real estate security of double the value of the loan, with personal security in addition thereto.

Section 10, supra, is unambiguous and needs no con-

struction and we do not find any construction of this section by the appellate courts of this state. This section is also not only a limitation upon the acts of the Legislature but is also a limitation on the county courts and must be followed specifically. In the case of Saline County v. Thorp, 88 S. W. (2d) 183, paragraphs 5-7, the Supreme Court, in holding that the county court could not waive any of the limitations upon a loan of school funds, said:

"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. * * * * * "

In your letter you say that this will only be a temporary arrangement for the protection of the money but in the above case the court also said:

"* * * The county court should not be permitted to accomplish by indirection something which it is prohibited from doing directly. * * * * * "

By reason of Section 10, Article XI, the Legislature enacted Sections 10376, 10383 and 10384, R. S. Missouri 1939, which specifically set out the manner of the loan of county or township school funds.

Hon. David A. Dyer

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We have not overlooked Sections 6 and 9 of Article XI of the Constitution by reason of which the Legislature enacted Section 10871, R. S. Missouri 1939, which permitted the state school funds but not the county school funds to be invested by the State Board of Education in United States Bonds.

CONCLUSION

In view of the above authorities it is the opinion of this department that the County Court of St. Charles County cannot invest the school funds even for a short time in securities of the United States.

Respectfully submitted

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APPROVED:

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