

SCHOOL FUND  
MORTGAGES:

Who shall execute deed upon foreclosure, and  
kind of deed to be executed.

March 17, 1942

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Honorable G. Logan Marr  
Prosecuting Attorney  
Versailles, Missouri

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Dear Mr. Marr:

We have your letter of the 10th in which you  
submit the following for our opinion:

"The County Court as trustee for the school funds of the county belonging to the common school and the township school funds, has ordered sales of land under section 10387 R. S. 1939. These sales are held and the County has been buying in some of this land and taking title to the premises in the name of Morgan County, Missouri. In a case under question the county has found a buyer for one of these farms and is seeking to make a deed for a cash sale, and the questions have arisen 1- How and who will make the deed for Morgan County? 2- What kind of a deed will be executed and delivered, a warranty deed, a special warranty deed, or a quit claim deed?

"I want to call your attention to section 10389 R. S. 1939, which provides that the County Court can appoint an agent to take charge of, rent out, lease and otherwise manage same under direction of the county court. Can the agent thus appointed, also make a deed to resell this land?

In this case the county clerk is appointed the agent to look after these lands.

"Or, does the county court have to appoint a deed commissioner under section 13784 R. S. 1939, in order to make a title to these lands to the prospective purchaser?"

"In the case of a kind of deed, if the county makes a warranty deed, then will the county be liable for all expressed and implied warranties in such a deed? What authority has a county court to guarantee the title, the possession of a piece of land? I cannot find any authority for this.

"It just seems to me, and I am asking for an opinion, that under Miller vs Bayless 194 Mo. 630, 92 SW 482, a special warranty deed would be the one to use. The form is approved in this decision. It would keep the county from being liable for any damages that the county officers and the county did not cause. Or would you advise that a quit claim deed be used?"

We shall answer your questions in order.

I.

Who should make the deed for Morgan County?

Section 10389, R. S. Mo. 1939, after providing when the title to the land in question may be taken in the name of the county, provides as follows:

" \* \* \* 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."

By the foregoing section the county court is given the power to take charge of and manage the land in question, and to dispose of it when in the court's judgment such disposal would be advantageous to the school or schools interested therein. The statute does not direct by whom the deed should be executed, but the county court is given express power to sell the land. This grant of express power necessarily carries with it the implied grant of such power as is necessary to enable the county court to carry out the sale of the land. This is true because of the familiar rule that whenever a duty or power is conferred by statute upon public officials, all necessary authority to render the performance of such duties effectual is conferred by implication. The rule has been stated thus:

"But it is also well settled, if not fundamental law, that whenever a duty or power is conferred by statute upon a public official, all necessary authority to make such powers fully efficacious, or to render the performance of such duties, effectual, is conferred by implication." (State ex rel. Bybee v. Hackmann, 276 Mo. 110, l. c. 116.)

Therefore, we must conclude that the county court has the power to cause a deed to be executed since such power is necessary to effectuate the sale of the land.

The question still remains, however, as to who shall execute the deed, and as to whether Section 13784 of the Statutes applies to the transaction in question.

Said Section 13784 reads as follows:

"The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to their county; and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate which the county may then have in or to the premises so conveyed."

It will be noted that the above section governs the sale by the county court of any real estate belonging to their county. The land bid in in the name of the county under the provisions of Section 10389 does not belong to the county. The county court is trustee for the school fund (see Sections 10376 and 10378, R. S. Mo. 1939, and also *Saline County v. Thorp*, 337 Mo. 1140, 88 S. W. (2d) 183), and when it causes title to land foreclosed under school fund mortgages to be taken in the county, it is merely placing the legal title in the county, but the beneficial title to the land is in the school funds interested. Therefore, we think that Section 13784 does not apply to the sale in question.

Reverting to the rule that the grant of express power to public officials carries with it the implied grant of such powers as are necessary to effectuate the power expressly granted, we must conclude that Section 10389 impliedly authorizes the county court to cause a deed to be executed by anyone it chooses. No doubt it could authorize anyone to execute the deed, whether such one be called a commissioner, or agent, or whether some officer of the

court be authorized to execute the deed. However, even though it is our opinion that Section 13784 does not apply in this case, yet the most convenient method for causing the deed to be executed would be for the court to appoint a commissioner, just as if they were selling land belonging to the county, and thereby any question of whether said section applied would be erased. The appointment of a commissioner to execute the deed would certainly be authorized by Section 10389, and such procedure would likewise eliminate any question that might be raised as to the applicability of Section 13784. Therefore, out of an abundance of caution, we would suggest that the county court appoint a commissioner to execute the deed in question.

#### CONCLUSION

It is, therefore, the opinion of this department that the county court can and should appoint a commissioner to execute the deed to lands bid in in the name of the county at a foreclosure sale under a school fund mortgage.

#### II.

What kind of a deed should be executed and delivered, a warranty deed, a special warranty deed, or a quit claim deed?

As pointed out above, the county does not really own the land to which it has legal title by virtue of Section 10389. The county court is trustee of said lands. The terms of the trust are set out in said section and, aside from management and control, are to resell the land. It would discharge this trust by passing to the purchaser what title it received to the land.

It is a well established principle that county courts are courts of limited jurisdiction and can only act within the powers granted to them by the Legislature. There is nothing in the statutes which would authorize the county court to

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warrant the title to the land in question to a purchaser. The execution by the county court of a deed containing warranties of title would amount to incurring obligations against either the county or the school fund, and before such could be done there would have to be statutory authority for same. Since there is no such authority in respect to the sale of the land in question, we must conclude that the county court does not have that power.

CONCLUSION

Therefore, it is the opinion of this department that the county court should cause to be executed a quit claim deed to convey land which was bought in in the county's name at a foreclosure sale of a school fund mortgage.

Respectfully submitted

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Assistant Attorney General

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ROY MCKITTRICK  
Attorney General

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