

TOWNSHIP SCHOOL FUND: No authority to invest in United States Bonds.

April 22, 1943



Hon. O. A. Kamp  
Prosecuting Attorney  
Montgomery City, Missouri

Dear Mr. Kamp:

This will acknowledge receipt of your letter of April 19, 1943, in which you request an opinion as follows:

"I am writing you regarding the loaning of Funds belonging to the County School Funds and to the Capital of Township School Funds, regulated by Sections 10376 to 10387 R. S. Missouri 1939.

"We have some funds on hand and there seems to be a scarcity of borrowers at the present time. The County Court asked me to write you for an opinion from your office, as to whether or not the County Court has any authority and whether it would be permissible, under the statutes, for them to invest some of the funds in United States Government Bonds, of the present Second War Loan or any U. S. Government Bonds?

"I will thank you for your opinion on this question at your earliest convenience."

In answer to your question concerning the investment of County School Funds regulated by Sections 10376 to 10387 R. S. Mo., 1939, we are herewith enclosing you copy of an opinion written by W. J. Burke, Assistant Attorney General, to Honorable David A. Dyer, Prosecuting Attorney, St. Charles, Missouri. The opinion holds that a County Court cannot invest School Funds in United States Securities.

In regard to your second question which concerns the investing of the Capital School fund, belonging to the Townships, in United States Bonds, your attention is called to Section 10384, Article 2, Chapter 72, R. S. Mo., 1939, as follows:

"When any moneys belonging to said funds shall be loaned by the county courts, they 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; and no loan shall be made to any person other than an inhabitant of the same county, nor shall any person be accepted as security who is not at the time a resident householder therein, who does not own and is not assessed on property in an amount equal to that loaned, in addition to all the debts for which he is liable and property exempt from execution. In all cases of loan, the bond shall be the county, for the use of the township to which the funds belong, and shall specify the time when the principal is payable, rate of interest and the time when payable; that in default of payment of the interest, annually, or failure by principal in the bond to give additional security when thereto lawfully required, both the principal and interest shall become due and payable forthwith, and that all interest not punctually paid shall bear interest at the same rate of interest as the principal. But before any loan shall be effected, the borrower shall file with the county court an abstract of title at the time he files his bond and mortgage to the real estate which is to be mortgaged."

In the case of Saline County et al., v. Thorp et al., 337 Mo. page 1140, Division I of the Supreme Court, in discussing the provisions of the laws concerning the lending of School Funds, spoke as follows at l.c. 1145:

"(4) Sections 9243-56, Revised Statutes 1929, say what a county court can do with reference to the investment, collection and reinvestment of public school funds. These statutes require that county courts 'diligently collect, preserve and securely invest . . . on unincumbered real estate security, worth at all times at least double the sum loaned . . . the county school fund;' and that these funds 'shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools.' (Sec. 9243) It is also provided by this section that the county court 'may, in its discretion require personal security in addition thereto.' The county treasurer is required to collect all school money, give receipts therefor, and file duplicate receipts with the county clerk. The county clerk is authorized to satisfy a school fund mortgage 'when the amount of said receipts is in full of all interest and principal of said bond and mortgage.' (Sec. 9246) School fund loans are required '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 also with additional personal security if deemed necessary. (Sec. 9251) The mortgage is required to recite the bond and contain a condition for sale by the sheriff upon 20 days' notice. (Sec. 9252) Even after a loan has been made, the county court is given power to require additional security on the bond 'when they in their judgment deem it necessary for the better preservation of the fund,' and to enforce payment of the principal if it is not given. (Sec. 9253) Provision for sale by the sheriff, on order of the court, is made by Section 9254, and authority for the county to purchase and manage mortgaged land is given by Section 9256.

April 22, 1943

"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. 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, 65 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 bond and mortgage, a note which does not conform to the statutory requirements. (Montgomery County v. Auchley, 103 Mo. 492, 15 S. W. 626.)"

The County Court is a body having limited powers and jurisdiction. These powers are limited and defined by statute, Consolidated School District vs. Jackson, 84 S. W. (2d) 988.

No power is given to the County Court to invest the Capital School Fund of the Townships in any other manner than is prescribed in Section 10384 supra.

#### CONCLUSION

The County Court cannot invest the Capital School Fund of the Township in United States Bonds.

Respectfully submitted,

W. O. Jackson  
Assistant Attorney General

APPROVED:

---

ROY McKITTERICK  
Attorney General

WOJ/mh  
encl.