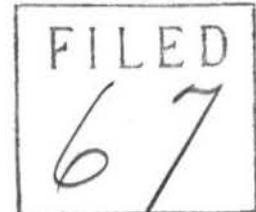


SCHOOL FUND MORTGAGES: Proper disposition of income by County Court for repossessed real estate; whether credited to interest fund or capital school fund itself.

October 27, 1943



Mr. Ben Nordberg
County Clerk
Jackson County
Kansas City, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of October 8th in which you request the opinion of this department. Your letter is as follows:

"The County Court of Jackson County, Missouri, recently made an order pertaining to the method of bookkeeping applicable to the Capital School Fund of Jackson County, Missouri, which order provides among other things as follows:

"That all income from interest, rentals, commissions, appraisals and other sources (except such as is required by law to be credited to capital account and except profits on sale of foreclosed property) be credited to the interest fund, that all administrative and other expenses (except foreclosure expenses, back taxes and losses on sale of foreclosed property) be charged against the interest fund."

"The legality of this court order has been questioned, and I am appealing to you for a ruling upon two points - (1) In the event property acquired through foreclosure of mortgage made from the Capital School Fund is rented, or any income is received

therefrom other than interest, should the income received be credited to the Interest Fund or should the income be credited to the Capital School Fund itself. (2) Is it proper that all administrative expenses incurred by reason of administration of the Capital School Fund be charged against the Interest Fund, or is it permissible or mandatory that expense incidental to the management and inspection of the school fund be properly charged against the school fund itself."

We shall answer your two questions in the order submitted above.

Article XI, Section 8 of the Missouri Constitution, provides as follows:

"All moneys, stocks, bonds, lands and other property belonging to a county school fund, also the net proceeds from the sale of estrays, also the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of the State, and all moneys which shall be paid by persons as an equivalent for exemption from military duty, 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 faithfully appropriated for establishing and maintaining free public schools in the several counties of this State."

Pursuant to the above section of the Constitution, Section 10376, R. S. Mo. 1939 was enacted. This section makes it the duty of the county court to preserve and securely invest the school fund monies and it is stated in the following language:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, * * * * * property belonging to the county school fund; * * * * *"

The Supreme Court of Missouri in the case of Ray County, to the use of the Common School Fund v. Bentley, et al., 49 Mo. l. c. 242, said:

"* * * The county is not the owner of the fund; the title is simply vested in it as trustee, for convenience, to carry out the policy devised by the law-making power for the appropriation and distribution of the fund. In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. * * * * *"

And further, in the case of Morrow v. Pike Co., 189 Mo. 610, l. c. 622, the court said:

"* * * the public school fund does not belong to the county in a technical sense.

It is a trust fund, and the county court is merely a trustee to carry out the policy defined by the lawmaking power in relation to the fund * * * * ."

From the foregoing it will be observed that the county court, in the care, management and control of the school funds, acts as a trustee of said funds.

Section 10389, R. S. Mo. 1939, sets out the duties and obligations of the county court where it becomes necessary for the county court to protect the interest of the schools in the event of the foreclosure of a school fund mortgage. 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."

When it becomes necessary for the protection of the township school funds, or the general school funds, that the property be foreclosed and purchased, it is the duty of the county court to hold and manage said property for the use of the respective school funds involved.

We think it proper, after the county has acquired property through foreclosure proceedings, for it to set up a special account for each property foreclosed and repossessed by the county, and in this account should be deposited all rents, royalties and other income, and from this account all items of expense in connection with said repossessed property should be paid. Such expense including maintenance, repairs, insurance and other items of expense. If and when the property is disposed of, it then can be determined whether there is a profit or loss to the particular fund involved, from that particular property. If this procedure is followed and there is a balance left it will be reflected in such gain to the school fund. Until this is done there is no income to be distributed to the various schools.

However, when this balance, which has been lodged in the school fund, is reloaned the public schools will then receive the benefit through the interest earned.

CONCLUSION

It is, therefore, (1) our opinion that the income derived from the property should not be credited to the interest fund, but should go into the school fund itself, for the reason that it cannot be determined that there is an income until all expenses in connection with the particular property have been paid.

Mr. Ben Nordberg

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It is further (2) our opinion that the expenses incurred in the administration of the capital school fund should be charged against the capital school fund itself.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

CRH:CP

APPROVED:

ROY MCKITTRICK
Attorney-General