

County Court: School fund mortgages. Rate of interest.
Reduction of interest before termination
of contract.

June 13, 1944

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Honorable Waldo P. Johnson
Assistant Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Mr. Johnson:

This is an acknowledgment of your letter addressed to the General on June 10, 1944, relating to a question of the rate of interest to be charged and collected on school fund mortgages. Your inquiry is as follows:

"I am directed by the County Court to ask your opinion as to whether the rate of interest to be collected on loans of the County School Fund and of the Township School Funds then existing is affected by an order of the Court providing that on loans made thereafter the rate of interest should be at a lower rate.

"Specifically, the County Court on May 22, 1944 made an order providing that loans should thereafter be made at 4% interest. All loans then outstanding bore 6% interest. Certain borrowers contend that the County Court is without authority to reduce the rate of interest on new loans without reducing the rate on loans then outstanding. All loans are due according to their terms on December 31st of the year in which made and, without formal extension, are permitted to run from year to year upon payment of interest as long as the security is considered satisfactory. In practice payment of loans has always been accepted at any time with interest to date of payment only.

"The question also presents itself as to whether the County Court has authority, if it so desires, to reduce the rate of interest on outstanding loans below the contract rate."

Section 10376, Laws of Mo. 1943, is as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than three per cent per annum on unencumbered real estate security, worth at all times at least double the sum loaned, with personal security in addition thereto, the proceeds of all moneys, stocks, bonds, and other property belonging to the 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 this state 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 in the several counties of this state." (Underscoring ours.)

Section 10383, R. S. Mo. 1939, is as follows:

"Whenever there shall be in the county treasury any money belonging to the capital of the school fund of any township therein, the county court of such county shall loan the same for the highest interest that can be obtained, not exceeding eight nor less than four per cent per annum, upon conditions and subject to the restrictions hereinafter set forth." (Underscoring ours.)

Section 10384 thereof provides in part as follows:

"* * *In all cases of loan, the bond shall be to 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.* * *" (Underscoring ours.)

The above section was amended by the Laws of Mo. 1943, in S. B. 13, p. 880-1, which is in part as follows:

"* * *In all cases of loan, the bond shall be to the county, for the use of the township to which the funds belong, and each loan shall be made for not more than five years, and the bonds shall specify when the principal is payable and the rate of interest to be paid thereon; that the interest shall be paid annually and in default of payment of the interest annually, or failure by the principal in the bond to give additional security at any time during the existence of said loan when thereto lawfully required by the county court, both the principal and interest shall become due and payable forthwith and the county court may proceed to cause the real estate securing payment of the loan to be sold as hereafter provided. The said bond shall provide that if the interest is not punctually paid, it shall become as principal and bear the same rate of interest.* * *" (Underscoring ours.)

Section 46, Art. IV, Constitution of Mo, is as follows:

"The General Assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity."

In defining the powers and duties of the County Court in administering a county public school fund the Supreme Court

in the Case of Saline County v. Thorp, 88 S. W. 2d. 183, 186 held:

"* * * It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations, Montgomery County v. Auchley, 103 Mo. 492, 15 S. W. 626.

"Sections 9243-9256, R.S. 1929 (Mo. St. Ann. Sections 9243 to 9256, pp. 7098-7104), 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 unencumbered 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.' Section 9243 (Mo. St. Ann. Section 9243, p. 7098). 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.' * * *"

"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. Why should it have any authority to release one who borrowed from this fund from his obligation to repay it? * * *"

Each loan is an individual contract between the county court as trustees for the fund and the borrower. Such court does not act in the capacity of a court but as statutory trustees. This being true, a general court order should not be made fixing an arbitrary rate of interest on all loans. Therefore, such trustees in making each loan should execute their trust by loaning for the highest rate of interest that can be obtained, "not exceeding eight nor less than four per cent per annum".

CONCLUSION

Therefore, it is the opinion of this department that the members of the county court acting as trustees in making loans out of the funds provided in Sections 10376 and 10383 supra must loan such funds for the highest rate of interest that can be obtained in each loan within statutory limits. A loan made for a definite time and rate of interest, as provided by statute, must, by such trustees, be strictly enforced according to the terms of the mortgage and bond. A reduction of interest by such trustees on such executed contract before its termination would constitute a grant of public money and violate the

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provision of Section 46, Art. IV of the Constitution of
Missouri.

Respectfully submitted,

SVM:EH

S. V. MEDLING
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APPROVED

ROY MCKITTRICK
Attorney General