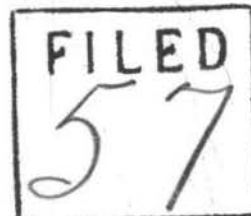


SCHOOLS. : Where default occurs on loan of  
: surplus school funds made under  
: sections 10434 and 10435, R. S.  
: Mo., 1939, County Court makes  
: order of foreclosure as is pro-  
: vided by Sec. 10387 R. S. Mo.  
: 1939.

August 9, 1944



Honorable Gordon J. Massey  
Attorney at Law  
Ozark, Missouri

Dear Mr. Massey:

This will acknowledge the receipt of your letter of July 15, requesting an opinion from this office, which is as follows:

"A common school district has more money on hands than they need and can according to section 10434 R. S. Mo., 1939, loan some of it according to section 10435.

"The county court makes the loan and default is made. Who makes the order of foreclosure, the county court of the school board. Just what procedure is necessary if the school district makes the order.

Section 10434, R. S. Mo., 1939, provides:

"Whenever it shall be found that any school district has any surplus funds in the county treasury, the directors of such school district may make application, in writing, to the county court, setting forth that school funds are accumulating beyond the wants or necessities of such district. Upon such application, it shall be the duty of the county court to cause such funds to be loaned for the use and benefit of such school district."

Section 10435, R. S. Mo., 1939, provides:

"Such school funds shall be loaned at the same rate of interest and in the same manner as township school funds are loaned: Provided that no school tax shall be levied in such district other than for incidental expenses during the time for which such surplus fund

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is sought to be loaned; and provided further, that a free public school shall be maintained in such school district for at least eight months in each year. (R. S. 1929, Sec.9318.)"

You will note that the funds must be loaned at the same rate of interest and in the same manner as township school funds are loaned.

Sec. 10383 R. S. Mo., 1939, provides for the investment of the township school fund. Section 10384, 10384 A, 10384 B, 10385, 10386, Laws of Mo. 1943, p. 881, provide for the type of loan, insurance, security, etc.

Sec. 10387, R. S. Mo., 1939, provides:

"Whenever the principal and interest, or any part thereof, secured by mortgage containing a power to sell, shall become due and payable, the county court may make an order to the sheriff, reciting the debt and interest to be received, and commanding him to levy the same, with costs, upon the property conveyed by said mortgage, which shall be described as in the mortgage; and a copy of such order, duly certified, being delivered to the sheriff, shall have the effect of a fieri facias on a judgment of foreclosure by the circuit court, and shall be proceeded with accordingly. (R. S. 1929, S. 9254.)"

You will note that the County Court makes the order to the Sheriff causing the foreclosure.

CONCLUSION.

It is therefore, the opinion of this office that when a loan of surplus funds is made under Sections 10434 and 10435, R. S. Mo., 1939, and there is a default, the County Court makes the order of foreclosure as is provided by Sec. 10387 R. S. Mo., 1939.

Respectfully submitted

APPROVED:

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RJF:LeC