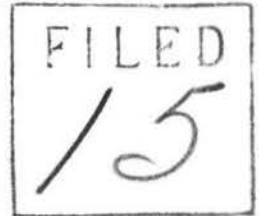


SCHOOL FUND LOANS: Applicability of Sec. 7, Art. IX, of the Constitution of 1945 to outstanding school fund loans and to investments of the capital of county and township public school funds.

October 22, 1945



10/26

County Court of Jasper County  
Carthage, Missouri

Attention: Hon. Omer L. Carrothers  
Presiding Judge

Gentlemen:

Reference is made to your letter of October 17, 1945, requesting an official opinion of this office, and reading as follows:

"Under Article 9 - Section 7, regarding County and Township School Funds Loans: we would like to know when the dead line is set for these loans to be liquidated and if the loan is for 5 years and did not become due until 1948, if the County Court will be forced to liquidate this loan sooner than the maturity date.

"We would also like to know if the County Bonds can be purchased with this money the same as State Bonds and School District Bonds."

With respect to the question propounded by the first paragraph of your letter of inquiry, we direct your attention to an opinion of this department delivered under date of March 19, 1945, to the Honorable G. R. Chamerlin, Prosecuting Attorney, Harrisonville, Missouri. A copy of such opinion is enclosed herewith, and we believe it will serve to answer your question.

October 22, 1945

With respect to the question propounded in the second paragraph of your letter of inquiry, we direct your attention to a portion of Section 7, Article IX, of the Constitution of 1945, reading as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund. \* \* \* "

Although you have not made specific inquiry regarding the date when such investments may be made, we enclose herewith a copy of an opinion of this department delivered under date of March 19, 1945, to the Honorable Alvin B. Walker, Prosecuting Attorney, Milan, Missouri, as it does cover this precise feature of the matter under consideration.

Inasmuch as county bonds are not among the types of investment enumerated in the above quoted constitutional provision, it is necessary to determine whether or not such bonds are by implication contained therein.

The only possible group of securities which might encompass county bonds would be that denominated "bonds of the state." We do not find this phrase having been defined by an appellate court of the State of Missouri, but do find that this phrase has received a judicial construction by the Supreme Court of the State of Washington. Such construction is found in the case of *Lumbermen's Indemnity Exchange v. State of Washington*, 113 Wash. 82. That court was construing a statute which read, in part, as follows:

" \* \* \* that if any such company \* \* \* shall have fifty per centum or more of its assets invested in any bonds or warrants of this state, \* \* \*."

Claim had been made by the appellant insurance company that United States Liberty Loan Bonds were included within the phrase quoted. In disposing of this contention, the Supreme Court of the State of Washington said:

" \* \* \* it is sufficient to say that a bond upon which the state is not liable for payment cannot be a bond of the state. The people of this state, as citizens of the state, are not called upon to pay, nor can they be taxed to pay, these bonds, nor is their credit pledged in security of them, nor are the assets of the state pledged for their payment, and as there is no obligation of any kind on the people of this state, or the state itself, to pay these bonds, they are not bonds of the state."

Applying these principles to bonds issued by a county, we believe it is apparent that such bonds are not "bonds of the state," within the meaning of the phrase as used in Section 7, Article IX, of the Constitution of 1945.

#### CONCLUSION

In the premises, we are of the opinion that Section 7, Article IX, of the Constitution of 1945 does not require the immediate liquidation of outstanding county school fund loans, and that such action will necessarily be taken only when such loans become due subsequent to the effective date of this portion of the Constitution of 1945; and we are further of the opinion that all matters relating to the collection and preservation of present county school fund loans will be governed by the existing statutes relating thereto until July 1, 1946, unless such statutes be sooner repealed or amended by act of the Legislature.

October 22, 1945

We are further of the opinion that bonds of a county are not "bonds of the state," within the meaning of that phrase as used in Section 7, Article IX, of the Constitution of 1945, and that county and township public school funds cannot lawfully be invested in the bonds of a county.

Respectfully submitted,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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