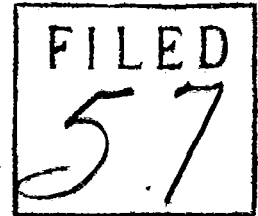


COUNTY COURTS:  
SCHOOLS:

County court cannot borrow county school fund.

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Mr. Gordon J. Massey  
Prosecuting Attorney  
Ozark, Missouri

Dear Sir:

We have your letter of recent date, which reads as follows:

"We have a surplus of money in the Capital School fund which, under present conditions, the court has not been able to loan.

"Please advise whether or not the county court can set aside this money to the general revenue and use it to pay current expenses, repaying the amount borrowed say with 3% interest when the taxes are collected.

"Such a procedure if permitted will save the county money, make the capital school fund a little and do no harm."

The courts of this state have always treated the county school fund as a trust fund and have laid down the rule that in dealing such such fund county courts can only act as the statutes provide. In *Montgomery County v. Auchley*, 103 Mo. 492, the court said, l. c. 502:

" \* \* \* The solution of this question will depend largely upon the power of the county courts in regard to school funds. That they are simply trustees of these funds will

not be disputed. All powers they possess in regard to them are derived from the statutes. \* \* \*

Likewise, in *Morrow v. Pike County*, 189 Mo. 610, 622, the court, in discussing the county school fund, said:

" \* \* \* 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 (*Ray County to use v. Bentley*, 49 Mo., l. c. 242); it may not divert the general county revenue to its protection, and, on the other hand, it can not apply the school fund to the payment of ordinary county debts. \* \* \*

See, also, *Ray County v. Bentley*, 49 Mo. 236.

Furthermore, Section 8, Article XI, of the Constitution, which said section was adopted by the people at the November election, 1944, after providing for the creation of the county school fund, provides that said fund "shall belong to the several counties as a county public school fund to be invested, used or disbursed for free public school purposes in the respective counties in such manner and at such times as the General Assembly shall by law provide."

It is apparent, therefore, that we must look to the statutes to see how the county court can handle and manage the said county school fund.

Section 10376, page 880, Laws of 1943, provides 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; \* \* \* "

Section 10378, R. S. Mo. 1939, provides that the county school fund shall be invested in the same manner and under the same restrictions as township school funds are invested.

Section 10384, page 881, Laws of 1943, provides how township school funds shall be invested, and it provides that:

"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, with personal security in addition thereto; \* \* \* "

Sections 10384A, 10384B and 10385, page 881, Laws of 1943, set out the detailed steps to be followed by the county courts in making loans of such township funds.

Nothing is found in the statutes which authorizes the county court to borrow the county school fund by transferring it temporarily to the general revenue fund of the county. The reason the statutes limit the manner of loaning such funds to loans upon real estate security is no doubt due to the fact that prior to the general election on November 7, 1944, the Constitution of Missouri prevented the loaning of such funds in any other manner.

Section 10, Article XI, of the Constitution of Missouri read as follows:

"All county school funds shall be loaned only upon unencumbered real estate security

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of double the value of the loan, with personal security in addition thereto."

Said section 10 was repealed by the people at the general election on November 7, 1944, and Section 8, Article XI, supra, was adopted. While the Constitution does not now limit the investing of the county school fund to real estate loans, yet it does provide that such fund shall be invested in such manner as the General Assembly shall direct. The only directions the General Assembly has made are contained in the statutes above referred to.

CONCLUSION

It is, therefore, the opinion of this department that a county court cannot borrow for, or set aside to, the general revenue fund of such county any part of the county school fund and use it to pay current expenses, even though the county court contemplates paying interest for the use of such fund.

Respectfully submitted

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APPROVED:

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