

COUNTY COURTS: Right to purchase lands sold under school fund mortgages.

W. Smith

February 14, 1946

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Honorable G. R. Chamberlin
Prosecuting Attorney
Harrisonville, Missouri

Dear Sir:

This office is in receipt of your request for our official opinion on the following question:

In 1937 the County Court of Cass County purchased at a foreclosure sale under a school mortgage certain land for the sum of \$600.00. The County Court has subsequently sold a portion of the property and received some income amounting to a total sum of \$850.78, leaving a deficit in the original mortgage of \$1149.42. The County Court now desires to acquire for road purposes a large amount of stone located on the portion of the property remaining under custody of the County Court. In what manner may this stone be lawfully acquired in order that the school fund be properly protected?

Section 8486, R. S. Mo. 1939, empowers the various counties of the state to purchase or acquire by right of eminent domain gravel pits, quarries, and lands for other types of building material.

Section 10389, R. S. Mo. 1939, authorizes the various county courts of the state to purchase land sold under foreclosure of school fund mortgages in order to properly protect the school fund. That section is 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."

This section obviously places the county court in the position of trustee of the property purchased for the benefit of the school fund. That being true, the county court may not directly purchase the property from itself as trustee without subjecting itself to a possible action to set aside the sale.

In *Guy v. Mayes*, 235 Mo. 390, a purchase by a trustee of the property in his charge was under discussion, and the court, in condemning this transaction, stated, l. c. 398:

"The law looks with great disfavor upon purchases by trustees of the trust property in their charge; and upon a direct attack, will set aside such transactions upon slight proof

of fraud, deception, unfairness or over-reaching. However, the purchase by a trustee of trust property is not void, but only voidable at the instance of the injured party or someone standing in his shoes. (Richards v. Pitts, 124 Mo. 602; State ex rel. v. Jones, 131 Mo. 194; Burford v. Aldridge, 165 Mo. 419.)"

It seems to us that the original mortgagor, or possibly the sureties on the bond which was undoubtedly required at the time the original loan was made, might be in a position to attack the sale of the property to the county by the county court. We believe that the county court should dispose of this property at public or private sale, as directed by Section 10389, and then proceed to condemn or purchase the necessary stone for the required road building purposes, as provided in Section 8486.

CONCLUSION

It is, therefore, our conclusion that the County Court of Cass County may properly obtain the stone located on school lands held by it as trustee by (1) selling said lands to a bona fide purchaser and thereafter contracting for the purchase of said lands or the stone thereon, or (2) exercising its right of eminent domain on the desired portion of said property after a bona fide sale if a purchase price could not be agreed upon with the owner.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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