

Copy to Mr. John
CONSTITUTIONAL LAW : Section 7, Article IX, Constitution of
AND SCHOOLS : Missouri, 1945, providing for distribution
: of liquidated county school fund refers to
: entire capital of fund.

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Honorable Roscoe E. Moulthrop,
Prosecuting Attorney
Harrison County,
Bethany, Missouri.

Dear Sir:

We have received your request for an opinion of this department, which request reads as follows:

"An opinion is respectfully requested of your office as to the construction of Article IX, Section 7, of the Constitution of 1945, with regard to the following provision, namely,

"Any county. . . by a majority vote of the qualified electors voting thereon may elect to distribute annually to its school the proceeds of the liquidated school fund, at the time and in the manner prescribed by law."

"In view of the fact that there appears to be no possibility of increasing the capital school fund of Harrison County, it would appear that the above constitutional provision applies only to interest, fines, penalties, etc., that may be distributed annually and not the principal sum of the school fund. It appears that if the principal sum of the capital school fund were intended to be distributed, by an election for that purpose, that this would not be an annual distribution as the fund would be paid out at one time, and there is no provision for any continuing source of revenue for the capital school fund after the effective date of the Constitution of 1945.

"The latter part of Section 10376 provides that the interest accruing from the re-investment of the county school fund, fines, penalties, etc., and all other money lawfully coming into said fund shall be

"... Distributed annually to the schools of the county as hereinafter provided in this article."

"As the only provisions provided thereafter in the article are those immediately following Section 10376, it again appears that the principal sum of the county school fund is not intended to be distributed, but that by an election provided for in Section 10376.2, the fines, penalties, forfeitures, etc., and all other money lawfully coming into the county school fund may be distributed annually to the schools of the county."

Section 7 of Article IX, Constitution of Missouri, 1945, reads in full 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. Any county or the city of St. Louis by a majority vote of the qualified electors voting thereon may elect to distribute annually to its schools the proceeds of the liquidated school fund, at the time and in the manner prescribed by law. All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law."

The provision for annual distribution of the liquidated county school fund is a new one, no such provision having been made in the Constitution of 1875 or the amendments thereto. The provision for annual distribution of penalties, forfeitures and fines is likewise new, Section 8 of Article XI, of the Constitution of 1875, as amended, having provided that such income should be added to the capital of the county school fund.

The Legislature has provided for elections in accordance with the constitutional provision above quoted. Sec. 10376.1 and 10376.2, Mo. R.S. Ann., Laws of Mo. 1945, p.876, Laws, 1947, p. 385. These provisions refer to the election as one to determine whether the capital of the liquidated school fund should be distributed annually. The Legislature has also provided for annual distribution of the proceeds of penalties, forfeitures and fines, without reference to an election. Sec. 10376, Mo. R. S. Ann., Laws, 1945, p. 1628. The constitutional provision quoted, together with the legislation adopted thereunder, refers, this office believes, to the capital of the county school fund and not merely to the penalties, forfeitures and fines. Inasmuch as the constitution and statutes now provide for annual distribution of penalties, forfeitures and fines, no election is required on that question.

In your letter you refer to the fact that if the constitutional provision covers the entire capital of the county school fund, all would be distributed in a single year and there could be no annual distribution. However, such would not necessarily be the case. Prior to the present constitutional provision, the county school fund was permitted to be invested in loans on real estate security. Sec. 10376, R.S.Mo. 1939. The present constitutional provision requires these investments to be liquidated without extension of time. Such loans cannot, of course, be collected prior to the time they become due, and generally a period of several years would elapse before all were paid. When collected, the amounts obtained would be required to be distributed annually instead of reinvested when distribution has been approved.

CONCLUSION.

Therefore, it is the opinion of this department that Section 7 of Article IX, Constitution of Missouri, 1945, providing for distribution of the liquidated county school funds, refers to the entire capital of said fund and not merely to penalties, forfeitures and fines.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney-General

APPROVED:

J. E. TAYLOR *JTB*
Attorney General

RRW/LD