

SCHOOL FUND LOANS: Applicability of Sec. 7, Art. IX, Constitution of 1945 to outstanding county school fund loans and to disposition to be made of fines and forfeitures.



October 22, 1945

Mr. Edgar S. Clatterbuck
County Treasurer
Fulton, Missouri

Dear Sir:

Reference is made to your letter of October 18, 1945, requesting an official opinion of this office, and reading as follows:

"On page 56, Sec. 7 of the Proposed Constitution of the State of Missouri states that all loans shall be liquidated without extension of time, is it that they must be collected by the 1st of June 1946? Our Judges were under the impression that they would not be forced to collect loans until they became due, but they could not renew any loan.

"Do I understand that all fines will be apportioned as Interest instead of being placed to the Capital School principal, and at what date I will be expected to make the change?"

With reference to the question propounded in the first paragraph of your letter of inquiry, we direct your attention to an official opinion of this department delivered under date of March 19, 1945, to the Honorable G. R. Chamberlin, Prosecuting Attorney, Harrisonville, Missouri. We believe that it will serve to answer your inquiry completely, and enclose a copy of such opinion herewith.

With reference to the inquiry contained in the second paragraph of your letter, we direct your attention to a por-

tion of Section 7, Article IX, Constitution of 1945, reading as follows:

" * * * 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."
(Emphasis ours.)

Here, clearly, is direct provision for the annual distribution of the proceeds of penalties, forfeitures and fines, and in the same manner as interest accruing from investment of the county school fund. It will, of course, require action by the General Assembly to provide such method of distribution, in view of the incorporation in the constitutional provision of the direction that such distribution shall be made "according to law." Such affirmative action on the part of the General Assembly has not as yet been had.

However, there is now existent a statute, found in Laws of 1943, at page 880, being an amendment of Section 10376, R. S. Mo. 1939, which reads, in part, as follows:

" * * * also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

Examination of the quoted portion of this statute with the quoted portion of Section 7, Article IX, of the Constitution of 1945 discloses that an inconsistency exists between the

two. Such inconsistency arises by virtue of the fact that under the statute only the income derived from the investment of such penalties, forfeitures and fines shall be distributed, whereas under the constitutional provision the entire proceeds of such penalties, forfeitures and fines shall be distributed annually, as may be provided by law.

In the premises, we believe the provisions of Section 2 of the Schedule appended to the Constitution of 1945 to be pertinent. Said Section 2 reads, in part, as follows:

"* * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

This portion of the Schedule has the effect of keeping in force the provisions of Section 10376, R. S. Mo. 1939, as amended, Laws of Missouri, 1943, page 880, until either July 1, 1946, or until such time as said section be repealed or amended to conform with the Constitution of 1945 by action of the General Assembly, whichever shall occur earlier in point of time. The records of the General Assembly do not disclose such action having been taken as yet.

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.

We are further of the opinion that only the income derived from the investment of proceeds of penalties, forfeitures

Mr. Edgar S. Clatterbuck

-4-

October 22, 1945

and fines shall be distributed annually, under the provisions of Section 10376, R. S. Mo. 1939, as amended, Laws of 1943, page 880, until July 1, 1946, unless said section be repealed or amended to conform with the Constitution of 1945 at a time prior to July 1, 1946.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB:HR