RECORDER OF DEEDS:
DEEDS OF TRUST :

In the event foreclosure proceedings are instituted by one or more bondholders, when the bonds are secured by a deed of trust, only those bonds need be produced to recorder of deeds under the statute.

October 7, 1940

FILED
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Mr. John P. English
Recorder of Deeds
St. Louis City, Missouri

Dear Sir:

This is to acknowledge your letter of recent date, requesting an opinion from this department, respecting the foreclosure of a deed of trust under the provisions of Laws of Mo. 1933, pages 192 and 193.

We deduce from your request for an opinion, which is quite lengthy and unnecessary to set out, that the question for determination is whether or not under the provisions of the statute hereinafter noticed, the recorder of deeds may compel the production of one hundred and sixty bonds which were secured by a deed of trust containing a power of sale, when the power of sale is exercised and a new trustee's deed is to be presented to the recorder for recordation.

Attention is directed to Laws of Mo. 1933, supra, which reads in part as follows:

> "In all cities in this State which now have or which may hereafter have 600,000 inhabitants or more and in all counties of this State which now have or may hereafter have 200,000 inhabitants and less than 400,000 inhabitants, no trustee's deed or mortgagee's deed under power of sale in foreclosure of any deed of trust or mortgage shall be accepted by the recorder of deeds for record unless the principal note or notes or other principal obligations which were unpaid when the foreclosure sale commenced and for the default in payment of which foreclosure is had, are produced to the recorder, or if said notes are lost then the affidavit of the owner of the principal notes or obligations that they are lost. Upon such trustee's or mortgagee's deed

> being filed for the record, the recorder shall make a notation on the margin of the record of the deed of trust or mortgage, and on the said principal note or notes or other principal obligations showing that such deed in foreclosure has been filed of record, in substantially the following form: 'Deed under foreclosure filed . . . . . 19 . . . . . Recorder.'" (Under-scoring ours.)

It is to be noted from your request for an opinion, that the attorneys for the holder of 50% of the bonds and coupons outstanding take the position that, after the foreclosure proceedings are instituted and a new trustee's deed is presented to the recorder only 50% of the bonds and coupons need be produced. It is to be further noticed, that this position of the attorneys is predicated upon the theory that the percentage of bonds and coupons held by their client are the principal notes which were unpaid and for the default in payment of which the foreclosure is had. Therefore, to satisfy the terms of the statute this percentage of bonds is all that is necessary to be presented to the recorder.

Apparently, this view is supported by the statute. We say apparently, because the statute is not entirely free from ambiguity. Consequently, in arriving at what we believe to be the intention of the legislature, we must be governed by fundamental rules of statutory construction. In this respect, attention is directed to the case of Bowers v. Missouri Mut. Ass'n, 62 S. W. (2d), 1058, in which case the court in speaking of the construction of statutes at page 1063 said:

> "* * * In arriving at the legislative intent, doubtful words of a statute may be enlarged or restricted in their meaning to conform to the intent of the lawmakers, when manifested by the aid of sound principles of interpretation. * * * * Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible as to further those ends and avoid giving them an unreasonable effect. * * * * "

Attention is also directed to the case of State ex rel. Lentine v. State Board of Health, 65 S. W. (2d) 943. In that case the court in speaking of rules of statutory construction at page 950 said:

> " * * * such rules should not be so applied as to restrict or confine the operation of a statute within narrower limits or bounds than manifestly intended by the Legislature and whether the proper construction of a statute should be strict or liberal it certainly should be such as to effectuate the obvious purpose of its enactment and the evident legislative intent. * * * "

Attention is also directed to the case of State v. Irvine, 72 S. W. (2d), 96. In that case at page 100, the court said:

> "* * * * The courts will not so construe a statute as to make it require an impossibility or to lead to absurd results if it is susceptible of a reasonable interpretation. * * * "

Attention is directed to the case of Artophone Corporation v. Coale, 133 S.W. (2d) 343, in which case the court, at page 347 said:

> " * * * * 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object and "the manifest purpose of the statute, considered historically," is properly given consideration.' * * * "

Tersely stated, it is to be deduced from these considerations, that a statute should receive a reasonable construction so as not to produce unreasonable consequences or absurd results.

Hence, in ascertaining the legislative intention, words used in a statute should be construed honestly and faithfully so as to promote its object. These observations lead us to a consideration of the statute before us.

In substance and effect, the statute provides that "* * * * no trustee's deed * * * under power of sale in foreclosure of any deed of trust * * * shall be accepted by the recorder of deeds for record unless the principal * * * notes * * * which were unpaid when the foreclosure sale commenced and for the default in payment of which foreclosure is had are produced to the recorder * * *".

From the language noticed in the statute, a colorable basis is afforded to you as recorder of deeds to refuse to file a trustee's deed in the event all of the principal notes which were secured by a deed of trust are not produced. On the other hand, it is to be observed, what caused the foreclosure? A solution to this question must necessarily be found in the terms of the deed of trust. In this respect, the deed of trust in part provides:

> " * * * WHEREAS, for the further securing the payment of the said Bonds and the interest thereon, the said St. Louis Gymnastic Society has agreed and does by these presents for its successors and assigns, convenant and agree to and with the said parties of the second part as Trustees and for the benefit of the said parties of the third part and their assigns, holder or holders of the said bonds above described * * * * "

It is further provided in part, that:

> "* * * If the said party of the first part or any one for it or its representatives or assigns shall well and truly pay off and discharge such debt and interest expressed in the said bonds and every part thereof, when the same shall become due and payable according to the true tenor date and effect of said bonds and shall well and truly keep and perform all and singular and several covenants and agreements hereinbefore set forth, then this trust and the lease hereinafter set forth, shall cease and be void and the property hereinbefore conveyed shall be released at the cost of the said party of the first part

> but if said debt on the said interest or any part thereof be not so paid when the same or any part thereof shall become due and payable according to the true tenor date and effect of said bonds or if default be made in due fulfillment of said covenants and agreement or any one of them, then this conveyance shall remain in full force, and the said parties of the second part (whether acting in personal or by attorney in fact thereinto authorized under seal) or in case of their death refusal to act, or other legal in capacity, the then acting sheriff of the City of St. Louis, in the State of Missouri, in this trust, may proceed to sell the property hereinbefore conveyed or any part thereof of public vendue or outcry on the eastern front door of the Court House in the City of St. Louis and State of Missouri, to the highest bidder for cash, * * * "

An examination of the portions of the deed of trust set forth discloses that it not only secured the principal, but secured the payment of the interest, and in the event a default of interest or any part thereof occurred, then the power of sale may be exercised for the benefit of all the bondholders and any proceeds remaining should be applied to the payment of said debt or interest. It is thus to be seen, that if the interest remains unpaid and due on any one of the bonds it would be entirely possible for any holder of a bond secured by the deed of trust to institute proceedings for foreclosure. This is not entirely amiss with the general proposition of law, that any one bondholder may enforce foreclosure proceedings. In this respect, attention is directed to the case of Graves v. Davidson 68 S.W. (2d) 711. In that case, the question before the court for solution, was whether or not a foreclosure sale was premature because the note secured by the deed of trust was not due and payable until March 1, 1930, and that on its face it did not provide for acceleration of the due date because of non-payment of interest annually or at stated times. Therefore, the deed of trust could not be foreclosed until after maturity of the note. In resolving the question, the court said at page 715:

> "* * * * By express terms of the note the parties made the interest payable semiannually.

> By the deed of trust they provided for foreclosure if the grantors failed to pay the interest when same or any part thereof became due and payable 'according to the true tenor, date and effect of said note.' That clause of the deed of trust was clearly meant to authorize foreclosure for nonpayment of the interest installments as they became due and payable semiannually by the terms of the note without waiting until the principal debt became due. We see no reason why the parties might not competently so contract or why such provisions in the deed of trust should not be held valid. * * * * "

In the above case, as here, the deed of trust as above set out provides, if the interest or any part thereof be not paid according to the true date and effect of the bonds secured, the holder or holders thereof may enforce foreclosure proceedings. Hence, it follows upon principle, under the terms of the deed of trust, if any part of the interest be not paid when due on any bond, such bondholder may enforce foreclosure proceedings. If then, foreclosure proceedings are instituted, and the property conveyed by the deed of trust is sold under the acceleration clause, such as we believe is presented by the deed of trust here involved, then it must be because of the failure to pay the interest on said principal note that caused the foreclosure sale and the default in payment of interest thereon, for which the foreclosure is had. Hence, when the trustee's deed under power of sale and foreclosure of the present deed of trust is presented to the recorder, it would only be necessary to produce to the recorder, bonds which were unpaid and for the default in payment of which the foreclosure proceedings were instituted.

This conclusion is in accord with provisions of the deed of trust before noticed. It is not believed that the parties to the deed of trust intended to require all the holders of bonds to agree to elect to accelerate the maturity of the entire issue after default. Any other interpretation of the deed of trust would present insurmountable difficulties in the sale of the bonds secured thereby, and prevent the accelerating of the maturity of the obligation in the event of default.

This interpretation of the deed of trust definitely supports our construction of the statute. If the statute under consideration

were construed in the present instance to mean that all of the one hundred and sixty bonds secured by the deed of trust after foreclosure sale would have to be produced to the recorder, then the statute presents an absurd situation whereby its terms could never be followed. Such we believe was never intended by the legislature.

You will appreciate that this opinion is predicated upon the terms of the deed of trust.

CONCLUSION

It is the opinion of this department that, only 50% of the bonds secured by a deed of trust, here under consideration, need be produced to the recorder of deeds in the event the foreclosure sale is to be instituted in order to comply with the terms of the statute.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

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