

SCHOOLS:

School board cannot use surplus to purchase
defense bonds.

April 23, 1942

Hon. J. R. Garrison
Prosecuting Attorney
Johnson County
Warrensburg, Missouri



Dear Sir:

We are in receipt of your letter of April 22,
1942, in which you request an official opinion, as follows:

"I would like to know if the School
Board of a closed school could invest
their surplus funds in Defense Bonds?

"The County Sup't. of Schools and my-
self are of the opinion that they
would be entitled to so invest their
funds. We would appreciate it very
much if you would give us your opinion
concerning this matter."

For the purpose of this opinion, we are assuming
that in your statement of facts you refer to a common school.

Section 13829, R. S. Missouri, 1939, provides that
where there is a balance in any county treasury in this
state to the credit of any special fund which is no longer
needed, the balance must be transferred to the credit of
the general revenue fund of the county. This section ap-
plies to a balance of any special fund.

Section 13776, R. S. Missouri, 1939, provides for
the loaning out of money in the hands of the treasurer
of a county collected for the purpose of constituting a
sinking fund for the payment of the principal of an in-
debtedness incurred for which bonds are outstanding or are
in litigation.

Section 13777, R. S. Missouri, 1939, provides for the loaning of the money collected in for the purpose of paying out of the sinking fund for the payment of the bonds outstanding and further provides that upon a loan of such money so collected the county shall cause the mortgage to be secured by lien on real estate with other restrictions.

Section 13782, R. S. Missouri, 1939, provides that in case the county court has loaned the money held for the purpose of paying the bonds and interest outstanding which are in litigation or undue may, instead of loaning the money and taking as security loans on real estate, purchase bonds of the United States or the State of Missouri, which bonds are to be held in trust for the fund or funds to which the money applied to their purchase belong and shall be so expressed in the public records of the county.

From the facts stated in the request for this opinion the funds expected to be used are from the school surplus funds and are not from funds collected in for the purpose of paying off a bonded indebtedness.

There is no question but that the county court is limited to their statutory powers and duties and would be liable if they misuse the funds out of the general revenue. That the county court must follow the statutes specifically was held in the case of Missouri Twp., Chariton County v. Farmers' Bank, 42 S. W. (2d) 353, l. c. 356, where the court said:

"These statutes were enacted by the Legislature for a purpose, that is, to safeguard the funds of the public, to establish a regular procedure, and prescribe an orderly manner in which the public funds may be expended. * *"

It has also been held that the county courts are not the general agents of the county or of the state and their powers are limited and defined by law. It was so held in King v. Maries County, 249 S. W. 418, pars. 1-2, where the court said:

"It has been held uniformly that county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. They have only such authority as is expressly granted them by statute. *Butler v. Sullivan County*, 108 Mo. 630, 18 S. W. 1142; *Sturgeon v. Hampton*, 88 Mo. 203; *Bayless v. Gibbs*, 251 Mo. 492, 158 S. W. 590; *Steines v. Franklin County*, 48 Mo. 167, 8 Am. Rep. 87. This is qualified by the rule that the express grant of power carries with it such implied powers as are necessary to carry out or make effectual the purposes of the authority expressly granted. *Sheidley v. Lynch*, 95 Mo. 487, 8 S. W. 434; *Walker v. Linn County*, 72 Mo. 650; *State ex rel. Bybee v. Hackmann*, 276 Mo. 110, 207 S. W. 64."

Also, in the case of *Morris v. Karr*, 114 S. W. (2d) 962, par. 3, the court said:

"In *Sturgeon v. Hampton*, 88 Mo. 203, at page 213, the rule was early announced which has been generally recognized in this state as follows: 'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely

irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

Also, in the case of Jensen v. Wilson Twp., Gentry County, 145 S. W. (2d) 372, pars. 1-2, the court said:

"The only question for our determination is whether the warrants are void because they were issued on claims which had not been verified. We find no decision of our courts on this precise question. However, we have considered Section 12301 and other sections pertaining to the allowance and payment of claims. We have said these statutes are enacted to establish a regular and orderly procedure in the expenditure of public funds for the purpose of safeguarding the funds and to permit the violation of these statutes would open the door to fraud. Accordingly, we held that laws for the protection of public funds must be heeded and said that this court should announce rules of law which require a compliance with such laws and should not permit an evasion of their plain intent and purpose. Missouri Township, Chariton County v. Farmers' Bank of Forest Green, 328 Mo. 868, 42 S. W. 2d 353."

Section 10434, R. S. Mo., 1939, reads as follows:

"Whenever it shall be found that any school district has any surplus funds in the county treasury, the directors of such school district may make application, in writing, to the county court, setting forth that school funds are

accumulating beyond the wants or necessities of such district. Upon such application, it shall be the duty of the county court to cause such funds to be loaned for the use and benefit of such school district."

Also, Section 10435, R. S. Missouri, 1939, reads as follows:

"Such school funds shall be loaned at the same rate of interest and in the same manner as township school funds are loaned: Provided, that no school tax shall be levied in such district other than for incidental expenses during the time for which such surplus fund is sought to be loaned; and provided further, that a free public school shall be maintained in such school district for at least eight months in each year."

The above section provides that the school funds shall be loaned at the same rate of interest and in the same manner as township school funds are loaned.

Township school funds are loaned, as set out in Section 10383, R. S. Missouri, 1939, which reads as follows:

"Whenever there shall be in the county treasury any money belonging to the capital of the school fund of any township therein, the county court of such county shall loan the same for the highest interest that can be obtained, not exceeding eight nor less than four per cent per annum, upon conditions and subject to the restrictions hereinafter set forth."

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The manner of loaning the money is set out in Section 10384, R. S. Missouri, 1939, which does not provide for the purchase of Defense Bonds.

Section 10385, R. S. Missouri, 1939, specifically sets out the form of mortgage notice of sale, fees, etc., and does not provide for the purchase of Defense Bonds.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the school board of a closed school cannot invest its surplus funds in Defense Bonds, and, if the school is permanently closed, the surplus should be returned to the general fund, as provided in Section 13829, R. S. Missouri, 1939.

Respectfully submitted

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APPROVED:

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