

COUNTY May not reduce interest on outstanding loans
COURT: and may not change school fund mortgage by
attaching "writer" to the mortgage.

June 24, 1943



Mr. Charles S. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Greenwood:

This will acknowledge receipt of your letter of recent date in which you request an opinion from this department and the basis of your request is as follows:

"The County Court of this County finds that the money in the school fund is accumulating so rapidly that they are unable to keep it loaned out at the present rate of interest they are charging. The Court would like to reduce the interest rate on all loans made from now on and at the same time reduce the interest on outstanding loans to the same rate. The question they are asking is, in order to reduce the interest on outstanding loans will they have to call in the loan and re-finance going through the complete formula of bringing the abstract down to date or can they attach a writer to the outstanding note stating that from this date the note will bear the reduced rate of interest?

"I am not sure, personally, that the Court has the authority to reduce the interest rate on outstanding

loan. At any rate you can gather from my questions what the Court has in mind and the desired opinion from your office as to whether or not under the law they are permitted to take this procedure of reducing interest rate on outstanding loans."

Directing our attention to the statutes and decisions which concern the county court and its administration of the school funds, we find that by Section 10378 R. S. Mo., 1939, the court is given jurisdiction of county school funds. We do not quote this section and merely cite the leading case, Saline County v. Thorp, 88 S. W. 2d 183, 337 Mo. 1140.

In Section 10376 R. S. Mo., 1939, the duty of the county court with respect to the administration of county school funds is set out, and we quote this section in full:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; 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, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, 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."

Security for the loans and the administration and procedure required is found in Section 10384 R. S. Mo., 1939. Because of its length we do not quote this section, but merely cite same for your convenience.

Now turning to the section which provides for additional security, which in the discretion of the court might be required, we find that Section 10386 R. S. Mo., 1939, provides the right of the court to exercise its judgment whenever it deems it necessary to require additional security for the better preservation of school funds. These latter sections of the statutes are noted for the purpose of showing the extreme care required by the county court in its administration of these funds.

As to the security of school fund loans we find this provision in Article XI, Section 10 of the Missouri Constitution, page 156c:

"All county school funds shall be loaned only upon unencumbered real

estate security of double the value of the loan, with personal security in addition thereto."

A provision for the order of sale under a general power to sell may be found in Section 10387 R. S. Mo., 1939. This section provides a detailed foreclosure procedure in the event a school mortgage shall become due and payable. Article VI, Section 36 of the Missouri Constitution at page 121c reads as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

The county courts, as such, have limited jurisdiction, and, being creatures of statutory origin, have no common law or equitable jurisdiction. Because of their statutory origin these courts have only the authority to do what is permitted by statutes. Sustaining this thought are the decisions in *St. Louis v. Menke*, 95 S. W. 2d 818, and *State ex rel. Johnson*, 138 Mo. App., l.c. 314.

Supporting the proposition that county courts are not general agents of the counties of the State but are courts with limited jurisdiction and any acts outside of their statutory authority are null and void are the decisions in *Boyles v. Gibbs*, 158 S. W. 590, 251 Mo. 492; *Sturgeon v. Hampton*, 88 Mo. 203; *King v. Maries County*, 249 S. W. 418, 297 Mo. 488; *State ex rel. Clin-*

ton County Court, 185 S. W. 1149, 193 Mo. App. 373.

The question of the duties of the county court with respect to loans has been before the courts of this State many times, and in *Montgomery County v. Auchley*, 15 S. W., l.c. 629, 103 Mo. 492, 508, we find the following:

"In *Veal v. County Court*, 15 Mo. 412, the county court had loaned school funds at ten-per-cent. interest, and afterwards, on the petition of the inhabitants of the township to which the funds loaned belonged, the court reduced the rate of interest to six per cent. This court held that this order reducing the interest was illegal, and Judge Scott, in referring to these funds and the nature of the trust assumed by the county courts, in regard to them, said: 'In relation to these funds the county courts are trustees. They have no authority to dispose of the principal intrusted, or any of its interest, otherwise than is prescribed by law. There is no difference in this respect between the principal and interest of these funds. If they can give away the one, they can give away the other.* *
* The welfare of the state is concerned in the education of the children. She has provided and is providing means for that purpose, not only for those now in existence, but for those who may come after them. The fund, as has been said, is a permanent one, and, if every man, woman and child in a township should petition the county court

to give away, that which is by law intrusted to it for the education of its children, it should without hesitation reject their prayer.'"

In this decision Thomas, J., makes this observation:

" * * * * * We deem it a wholesome rule to hold county courts to a strict performance of their duties in the management of this trust. With all these stringent provisions large sums of these moneys are frequently lost through negligent management. We would regard it as hazardous to lay down the doctrine that county courts may delegate the power to approve a loan and the security for a loan.*
* * * * * "

See also *Diffenderfer and others v. Board (St. Louis Public School)* 25 S. W., 1.c. 544.

A decision in point *Veal v. Chariton County*, 15 Mo. 412. In this case the county court had loaned school funds at ten per cent and afterwards, on the petition of the inhabitants of the township, the court reduced the rate of interest to six per cent. This decision also cites the following cases: *Board v. Boyd*, 58 Mo. 276; *Jones v. Mark*, 53 Mo. 147; *Montgomery County v. Auchley*, 92 Mo. 126, 4 S. W. 425; *Ray County v. Bentley*, 49 Mo. 236.

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CONCLUSION

From the above and foregoing it is therefore the opinion of this department that the county court has no authority to reduce the interest on an outstanding school fund mortgage loan nor does the court have the authority to change the terms and conditions of the mortgage and note by attaching a "writer" to the mortgage already in force. The court may in its discretion "diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent per annum, on unencumbered real estate security" on any new loans.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
Attorney-General

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