

SCHOOLS:
SCHOOL LOANS:

Duties of county courts in arriving at valuation of lands upon which a school loan is made.

October 13, 1942

Hon. Wyatt E. Hawkins
Clerk of the County Court
Plattsburg, Missouri

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Dear Mr. Hawkins:

This is in reply to your letter of recent date wherein you submit the following statement of facts in request of an opinion from this department:

"The laws of Missouri state, real estate must be assessed at full value. Also the laws of Missouri state, County Courts cannot make School loans for more than one half the value of the real estate. Will you please give me an opinion? Can the County Court make a School loan in excess of one half the assessed valuation of any real estate?"

County courts, in handling township and capital moneys belonging to schools, act as trustees. Under Section 10376, R. S. Missouri 1939, it is provided in part as follows:

"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; * * * * *

Section 10384, R. S. Missouri 1939, provides in part as follows:

"When any moneys belonging to said funds shall be loaned by the county courts, they shall cause the same to be secured by a mortgage in fee on real estate within the county, free from all liens and encumbrances, of the value of double the amount of the loan, with a bond, and may, if they deem it necessary, also require personal security on such bond; and no loan shall be made to any person other than an inhabitant of the same county, nor shall any person be accepted as security who is not at the time a resident householder therein, who does not own and is not assessed on property in an amount equal to that loaned, in addition to all the debts for which he is liable and property exempt from execution.
 * * * * *

Your question is whether or not the county court, in determining the value of the land upon which the loan is made, shall only take into consideration the assessed value of such land. Said Section 10384, supra, simply provides that the value of the land upon which the loan is made shall be double the amount of the loan. It does not limit the county court to the assessed value. However, the latter part of the above quoted provisions of said Section 10384, does require the county court, in passing upon the solvency of a security on the bond, shall require such person going on the security bond to own property assessed in an amount equal to the loan. That portion of said section requires the county court to look to the assessment value of the property of the surety, but it does not bind or direct the county court to consider only the assessed value of the property upon which the loan is made.

In the case of Saline County v. Thorp, 88 S. W. (2d) 183, the court had before it for consideration the duties of the County Court in regard to school loans, and said, at l. c. 186:

"* * * * * It must be remembered that this is a case where public officers were acting for a governmental subdivision of the state, a county, in relation to funds held in trust for the public for school purposes. Nothing is better settled than that, under such circumstances, such officers are not acting as they would as individuals with their own property, but as special trustees with every limited authority, and that every one dealing with them must take notice of those limitations. *Montgomery County v. Auchley*, 103 Mo. 492, 15 S. W. 626.

"Sections 9243-9256, R. S. 1929 (Mo. St. Ann. Secs. 9243 to 9256, pp. 7098-7104), say what a county court can do with reference to the investment, collection and reinvestment of public school funds. These statutes require that county courts "diligently collect, preserve and securely invest * * * * * on unincumbered real estate security, worth at all times at least double the sum loaned * * * the county school fund"; and that these funds '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. * * * * *"

By this statement it will be seen that the county court in performing its duties under this act is required to exercise its discretion in making loans, but under the statute the security must always be double the amount of the loan. In Vol. 65, C. J., 795, p. 672, the rule as to the duties of a trustee in the investment of the funds of a trust estate is stated as follows:

"* * * * * In the investment of trust funds the trustee must exercise sound discretion as well as good faith and honest judgment. * * * * *"

Further considering this question we call attention to the provisions of the Constitution and statutes relating to valuations for tax assessment purposes.

Section 4, Article X of the Constitution, provides in part as follows:

"All property subject to taxation shall be taxed in proportion to its value: * *"

Section 10981, R. S. Mo. 1939, provides in part as follows:

"The assessor shall value and assess all the property on the assessor's books according to its true value in money at the time of the assessment; * * * * *"

Speaking of the statutory duties of the officers in making assessments, the Supreme Court, in *State ex rel. v. Western Union Tel. Co.*, 165 Mo. 502, l. c. 516, said:

"The law contemplates that for purposes of taxation property shall be assessed at its true value in money, and it also presumes that all officers do their duty."

Said Section 10981, supra, requires the assessor to assess property at its true value in money. Section 4 of Article X of the Constitution requires it to be taxed in proportion to its value. Section 3 of Article X of the Constitution requires taxes to be uniform on the same class of subjects within the territorial limits of the authority levying the tax. Section 18 of Article X of the Constitution requires the State Board of Equalization to adjust and equalize valuations of real and personal property among the several counties in the State.

In the case of *Jefferson City Bridge & Transit Co. v. Blaser*, 300 S. W. 778, the court, in considering an attack on an assessment, in applying the provisions of said Section 4 of Article X, supra, said, l. c. 785:

"* * * If the persons charged with making this assessment refused to assess plain-

tiff's property in proportion to its value and in uniformity with all other taxable property in the state, they are presumed to have known that such assessment would be in violation of sections 4 and 3, respectively, of Article 10 of the Constitution of Missouri, and would result in unlawful discrimination against plaintiff's property. * * * * *

Even if the assessment is at the true value in money as required by Section 10981, supra, yet if it is not in proportion to its value as compared to the assessed valuation of other property in the same district, then such assessment would not be valid.

The State Board of Equalization in adjusting and fixing valuations for the counties fixes a total valuation for real and personal property in that county.

In the case of Bank of Carthage, et al. v. Thomas, 48 S. W. (2d) 930, l. c. 934, the court, in discussing the valuation fixed by the State Board of Equalization, said:

"* * * The presumption that the valuation fixed by the state board of equalization 'is the true value attaches' to the action of that board. * * * * *

And, in State ex rel. v. Bethards, 9 S. W. (2d) 603, l. c. 604, the court said:

"There is no such thing as an absolute true value of land. The 'values' mentioned in the statutes are the valuations of the officials whose duty it is to make them. Land is not like commodities which have a fixed market price at a given period. Its value is determined always by the estimate of the party who values it. The requirement of section 12802, that the assessor assess the property at its true value in money, means nothing more than that such

true value is his estimate, his valuation. The law contemplates that, in accordance with that section, he does assess it at its true value as he judges it. * * * * *

The court, in the Bethards case, referring to the section which applies to the county board of equalization, said, l. c. 605:

"That section means, if anything, that the state board of equalization fixes values as well as the assessor or the county board. * * * * *

The county taxing authorities, in making the assessment of properties in the county, must keep the aggregate valuation of real and personal property up to the aggregate amount fixed by the State Board of Equalization (Section 11038, R. S. Mo. 1939).

The State Board of Equalization in equalizing and adjusting the valuation for the counties shall first, add to the valuation of each class of property, real or personal, of each county, which it believes to be valued below its real value in money, such percentum as will increase the same in each case to its true value, and second, it shall deduct from the valuation of each class of property, real or personal, of each county, which it believes to be valued above its real value in money, such percentum as will reduce the same in each case to its true value (Section 11036, R. S. Mo. 1939). So, as a basis for adjustment and equalization, the State Board of Equalization uses the "true value" of the property.

The County Board of Equalization in performing its duties uses the "real value" of the property as a basis for equalizing properties for tax assessment purposes (Section 11003, R. S. Mo. 1939). This section reads in part as follows:

"The following rules shall be observed by county boards of equalization: First, they shall raise the valuation of all such tracts or parcels of land and any personal property, such as in their opinion have been returned below their real value, according to the rule prescribed

by this chapter for such valuation;
* * * * * second, they shall reduce the valuation of such tract or parcels of land or any personal property which, in their opinion, has been returned above its true value as compared with the average valuation of all the real and personal property of the county."

The provisions of this section indicate that the lawmakers distinguish between "true value" and true value as compared with the average valuation of real and personal property in the county. Such a construction of this section would be in harmony with the provision of the Constitution that property shall be taxed in proportion to its value.

The County Board of Equalization is composed of the county court and other officers. Since the county court is the body which administers the school funds, we have the same body passing upon values in different capacities, namely, the Board of Equalization for tax purposes and the county court for loaning school funds. The members of the county court as members of the board of equalization fix a certain valuation on property for tax purposes and, as members of the court fix a valuation for loan purposes. With the presumption that officers are presumed to do their duty, in case the aforesaid valuations are fixed at different amounts, then, it would follow that one of the valuations is wrong and illegal unless there is a different standard to apply in fixing valuations. Since the standard for tax valuations is limited to the proportionate value, and to the value as compared with the average valuation of all real and personal property of the county, then this might be a different value than the real value contemplated by Section 10384, supra, as a basis for a loan.

CONCLUSION

From the foregoing, it is the opinion of this department that "true value" of property for taxing purposes may not always be used to determine the real value of lands upon which a school loan is sought, because the "true value" for tax assessment purposes is a comparative value; that is, it is fixed in

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proportion to its actual value as compared with the average valuation of all other real and personal property of the county.

Respectfully submitted,

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