

SCHOOLS: Expenses of inspecting property which is security on school loan cannot be paid out of capital school fund.

February 9, 1943



Honorable Gordon J. Massey
Prosecuting Attorney
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Ozark, Missouri

Dear Sir:

This is in reply to your letter of February 5, 1943, which contains the following request for an opinion:

"This county has money in the Capital School fund which they loan on real estate. In order to make these loans it is necessary that the court inspect the land offered as security, which necessitates all members of the court viewing the land and most of the time the court must drive several miles to do this.

"Please advise me what if any of these costs may be charged against the Capital School fund since the time given by the court and the expense of transportation is for the benefit of the school fund."

Section 10376 R. S. Missouri, 1939, reads 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; 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."

Under the above section, it is the duty of the several county courts of this State, to diligently collect, preserve and securely invest money and other property belonging to the county school fund.

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Section 10383 R. S. Missouri, 1939, 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."

Section 10384 R. S. Missouri, 1939, provides the procedure of securing the county or township school funds.

Article XI, Section 6 of the Constitution of Missouri, reads as follows:

"The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks, bonds, lands and other property now belonging to any State fund for purposes of education; also, the net proceeds of all sales of lands and other property and effects that may accrue to the State by escheat, from unclaimed dividends and distributive shares of the estates of deceased persons; also, any proceeds of the sales of the public lands which may have been or hereafter may be paid over to this State (if Congress will con-

sent to such appropriation); also, all other grants, gifts or devises that have been, or hereafter may be, made to this State, and not otherwise appropriated by the State or the terms of the grant, gift or devise, shall be paid into the State treasury, and securely invested and sacredly preserved as a public school fund; the annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

It will be specifically noticed that this section prohibits the use or payment of the county school fund for any other use or purpose whatsoever, except for the maintaining of free public schools and the State University.

It can be said that it was the intention of the framers of the Constitution when they inserted "and for no other uses or purposes whatsoever" in the Constitution, and the intention of the legislature that the school funds should not be used, except for the maintaining of free public schools, when they enacted part of Section 10385 R. S. Missouri, 1939, which reads as follows:

" * * * In all cases of loan of school funds in the various counties, the expense of drawing and preparing securities therefor, and of acknowledging and recording mortgages, including the fees of all officers for the filing, certifying or recording such mortgages and other securities, shall be paid by the borrowers respectively."

We find no provision for the payment of expenses of transportation for members of the county court in inspecting the land offered as a security.

Members of the county court, by accepting the office, must perform the duties imposed upon them, even though there is no provisions for the payment of expenses in performing any special duties.

It was so held in the case of Smith, Judge v. Pettis County, 136 S. W. (2d) 282, 1. c. 285, where the court said:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup., 129 S. W. 2d 857; Ward v. Christian County, 341 Mo. 1115, 111 S. W. 2d 182. * * * "

Also, officers are required to perform their duties within the strict limits of their legal authority. It was so held in the case of Lamar Township v. City of Lamar, 261 Mo. 171, 1. c. 189, where the court said:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. Persons dealing with

them do so always with full knowledge of the limitations of their agency and of the laws which, prescribing their duties, hedge them about. They are trustees as to the public money which comes to their hands. The rules which govern this trust are the law pursuant to which the money is paid to them and the law by which they in turn pay it out. Manifestly, none of the reasons which operate to render recovery of money voluntarily paid under a mistake of law by a private person, applies to an officer. The law which fixes his duties is his power of attorney; if he neglect to follow it, his cestui que trust ought not to suffer. In fact, public policy requires that all officers be required to perform their duties within the strict limits of their legal authority." (Underscoring ours.)

Also, in the case of Saline County v. Thorp, 88 S. W. (2d) 183, l. c. 186, the court, in holding that public officers act as special trustees, with very limited authority in relation to funds, held in trust for the public for school purposes, said:

" * * * 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

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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." (Underscoring ours.)

CONCLUSION

It is, therefore, the opinion of this department, that the expenses incurred by the members of the county court, in inspecting land offered as security on loans made from the school fund, cannot be paid out of the capital school fund.

Respectfully submitted

W. J. BURKE
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APPROVED:

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