

SCHOOLS: (1) Prosecuting attorney to prepare the papers necessary in the loaning of money from county school fund.
(2) Duty of county clerk to see that such papers are properly recorded.

May 11, 1943



Mr. Bert E. Morgan
County Clerk
Daviness County
Gallatin, Missouri

The Attorney-General wishes to acknowledge receipt of your letter of May 6th requesting an opinion of this Department. Your letter of request reads as follows:

"I would like to know the responsibilities which belong to the County Clerk with reference to the School Fund Money, especially the loans which are made.

"Who should make out the papers for the loan, see that they are properly recorded and have them complete for filing?"

Your request, under our interpretation, includes two questions; first, who shall make out and prepare the necessary papers for a school fund loan, and, second, whose duty shall it be to see that such papers or forms are properly recorded and completed for filing.

Considering your first question we wish to cite you to Section 12944, R. S. Mo. 1939, which provides the following:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county

May 11, 1943

court, or any judge thereof, except in counties in which there may be a county counselor. He shall also attend and prosecute, on behalf of the state, all cases before justices of the peace, when the state is made a party thereto: Provided, county courts of any county in this state owning swamp or overflowed lands may employ special counsel or attorneys to represent said county or counties in prosecuting or defending any suit or suits by or against said county or counties for the recovery or preservation of any or all of said swamp or overflowed lands, and quieting the title of the said county or counties thereto, and to pay such special counsel or attorneys reasonable compensation for their services, to be paid out of any funds arising from the sale of said swamp or overflowed lands, or out of the general revenue fund of said county or counties."

As can be seen from the above statute, the prosecuting attorney shall represent his county in all matters of law and shall "draw all contracts relating to the business of the county." There can be no question that the preparation of the forms for a school fund loan is a contract relating to the business of the county. Therefore, it is the opinion of this department that this particular duty rests upon the prosecuting attorney under the provisions of the statute set out above.

It is with more difficulty that we seek an answer to your second question, since, unlike your first question, there is no provision of the statutes which provides whose duty it is to see that the necessary documents in the execution of a school fund loan are completed and properly recorded. In order to reach the correct solution to this query, we feel it requires a study of the general duties of the county clerks of the various counties in this State. But first we will cite you to the section of the statute which empowers the county court to manage the School Fund monies and to make School Fund Loans. This section is Section 10376, R. S. No. 1939, and prescribes 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."

Of course, the county court is a court of record in the State of Missouri, and the officer having custody, charge and control of the records of such court, and having the duty of keeping of such records, is the county clerk. It is common knowledge that he waits upon the county court and either he or his deputies keep the minutes of the meetings of the county court.

Your attention also should be called to Section 13295, R. S. No. 1939. This section of the statutes deals generally with the duties of the clerks of all courts of record, which, of course, includes the county clerks of the various counties. The provisions of such section are as follows:

"Every clerk shall record the judgments, rules, orders and other proceedings of

the court, and make a complete alphabetical index thereto; issue and attest all process when required by law and affix the seal of his office thereto, or if none be provided, then his private seal; keep a perfect account of all moneys coming into his hands on account of costs or otherwise, and punctually pay over the same: Provided, that where the clerk of the circuit court is a party, plaintiff or defendant (whether singly or jointly with others) to a suit or action, the writ of summons and all other process shall be issued by the clerk of the county court, the reason therefor being noted on said process, and said latter named clerk shall, on the trial of said cause, act as temporary clerk of the circuit court and otherwise perform in said cause all the duties of the circuit court clerk."

For the purposes of this inquiry we will further cite you Section 13823, R. S. Mo. 1939, which refers to the duties of the county clerk relative to the keeping of accounts due the county which are payable to the treasury of the county. Due to the length of such statute, we will only quote the second subsection which is the part pertinent to our instant problem. Such provision is as follows:

"* * *; second, to keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or that may become entitled to receive moneys therefrom; * * *"

From the statutory provisions cited above we think that the first step in the loaning of money from the county school funds, is the preparation of the necessary documents or papers by the prosecuting attorney of the county. After such preparation and the signing of all such papers by the proper party or parties, the forms should be presented to the county court for their approval. We think that the clause in

May 11, 1943

section 10376, supra, which states, "to diligently collect, preserve and securely invest" the school fund moneys, places upon the county court the duty to inspect the completed forms and to approve the bonds. If and when this is done, it is our opinion that it then becomes the duty of the county clerk, as the ministerial officer of the county court, to see that the papers involved are properly recorded. It might be argued that this should be the duty of the county court itself, under the admonition given in Section 10376, supra. However, we feel that this ministerial duty can and should be delegated to the county clerk, since by statutes he is charged with keeping the records of such loans, and is the officer required to conduct the many ministerial acts connected with the action of the county court.

Conclusion

Therefore, it is the opinion of this department that the preparation of the papers and documents necessary to the loaning of money from the county school fund, is the duty of the prosecuting attorney in the county where the school fund loan is to be made.

It is further the opinion of this department, that it is the duty of the county clerk, as the ministerial officer of the county court, to see that the deed of trust and other necessary papers, if any, are properly recorded.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG