

SCHOOL LOANS:) If requested by county court prosecuting
PROSECUTING ATTORNEY:) attorney should give written opinion on
title.

September 8, 1943

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Honorable J. F. Newton
Presiding Judge
County Court, right County
Mansfield, Missouri

Dear Judge Newton:

Under date of September 4, 1943, you wrote this office requesting an opinion as follows:

"Should the prosecuting attorney give the court a written report after examining abstracts in connection with the granting of school fund loans."

The statutes relating to the lending of school funds are found in Article 2, Chapter 72, R. S. Mo. 1939. Section 10378 gives to the county court jurisdiction over township school funds. Section 10376 provides for the capital school fund of the county and contains the following:

"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 of the same article and chapter provides 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. In all cases of loan, the bond shall be to the county, for the use of the township to which the funds belong, and shall specify the time when the principal is payable, rate of interest and the time when payable; that in default of payment of the interest, annually, or failure by principal in the bond to give additional security when thereto lawfully required, both the principal and interest shall become due and payable forthwith, and that all interest not punctually paid shall bear interest at the same rate of interest as the principal. But before any loan shall be effected, the borrower shall file with the county court an abstract of title at the time he files his bond and mortgage to the real estate which is to be mortgaged."

Attention is directed to the fact that these statutes require that the funds be loaned upon unencumbered real estate. The only way that the county court can be assured that the money is loaned upon unencumbered real estate, is by having the abstract of title examined by someone who is familiar with the law of real estate titles and conveyancing.

The prosecuting attorney is the legal advisor of the county court. Section 12944, R. S. Mo. 1939, provides as follows:

"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 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."

(Underscoring ours)

You will note that the prosecuting attorney has the specific statutory duty of furnishing opinions upon legal matters to the county court or any of the members thereof, and must report in writing if directed to do so.

Conclusion.

If the county court requests a written report concerning the title of lands offered as security for school fund loans, it is the duty of the prosecuting attorney of the county to give to the court his opinion in writing.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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