

SCHOOLS: (Interest received from school loans cannot be reinvested (but must be apportioned to school districts; county court cannot take second mortgages for security; property should be foreclosed in the event of default of interest payments (with the exception that security may be taken in order to secure interest payments if the facts warrant such.

January 14, 1937.

1-19



Honorable Edwin C. Orr  
Prosecuting Attorney  
Boone County  
Columbia, Missouri

Dear Mr. Orr:

This is to acknowledge your letter as follows:

"The County Court has asked me to render them an opinion on the following questions, to-wit:

"1. Can the County Court reinvest interest, or the proceeds derived from the loaning of county school funds?

"It has been their practice in the past not to reinvest the income from school fund mortgages. The law, as they understand it, is that they must divide the income among the various districts.

"2. In the event some borrower of county funds does not pay his interest, and becomes delinquent for one or several years, can the County Court take a mortgage either on real estate or personalty to secure the payment of the interest?

"3. If the County Court can take security for the payment of interest, would there be any objection to the County taking a second mortgage for the security?

"Of course delinquent interest on the note and deed of trust becomes principal by the provisions of the deed of trust, and in the event it is not paid, what is there to keep the County Court from taking additional security to secure the payment of interest?"

The county court has imposed upon it the duty of collecting, preserving and investing school funds. Sections 9243 to 9255, inclusive, R. S. Mo. 1929. Section 36, Article VI, Constitution of Missouri.

In *Veal v. Chariton County*, 15 Mo. 412, the Supreme Court of Missouri said (p. 414):

"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 the interest on these funds. If they can give away the one they can give away the other."

See also, *Montgomery County v. Auchley*, 103 Mo. 492; *Lafayette County v. Hixon*, 69 Mo. 581.

Section 9458, R. S. Mo. 1929, places the duty upon the county superintendent of schools to examine the records relative to school funds in order to ascertain that the law is being strictly observed as to such funds.

I.

Can the county court reinvest interest, or the proceeds derived from the loaning of county school funds?

Section 9257, R. S. Mo. 1929, relates to "Apportionment of public school fund" and has this provision:

"\* \* \*; and in making such distribution, each county clerk shall apportion \* \* \* and all moneys on account of interest of the funds accruing from the sale of section sixteen or other lands in lieu thereof \* \* \* and all other moneys, for the use of schools in the county, and not otherwise apportioned by law, to the proper district."

The school funds are permanent ones and the interest derived from such is apportioned to the school districts by the county clerk. There is no discretion left with the county court as to what interest it shall cause to be apportioned to the school districts because such are trustees and they have no authority otherwise than prescribed by law. The benefit the school districts receive from the school funds is the interest derived from such funds. The principal is never apportioned. If the county court could reinvest the interest received from the funds then the school districts would derive no benefit from such funds. We grant that in many instances it would be best for the county court to use their best judgment as to the handling of these funds, but the Legislature has decreed otherwise and the county courts have no discretion in the matter.

It is our opinion, in answer to your first question, that the county court cannot reinvest interest derived from school fund loans but that such interest is to be apportioned as provided by Section 9257, supra.

## II and III.

In the event some borrower of county funds does not pay his interest, and becomes delinquent for one or several years, can the County Court take a mortgage either on real estate or personalty to secure the payment of the interest?

If the County Court can take security for the payment of interest, would there be any objection to the County taking a second mortgage for the security?

Your questions, 2 and 3, are inter-related, so we will answer both of them at the one time.

Section 9251, R. S. Mo. 1929, provides for the security for loans, and reads 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; \* \* \* In all cases of loan, the bond shall be to the county \* \* 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. \* \* \*"

Section 9254, R. S. Mo. 1929, provides in part as follows:

"Whenever the principal and interest, or any part thereof, secured by mortgage containing a power to sell, shall become due and payable, the county court may make an order to the sheriff \* \* \* and a copy \* \* \* being delivered to the sheriff shall have the effect of a fieri facias on a judgment of foreclosure by the circuit court, and shall be proceeded with accordingly."

You will note that when the interest becomes due and payable that such by virtue of Section 9251, supra, bears interest and in addition makes both the principal and the interest due and payable forthwith, and by virtue of Section 9254, supra, the county court, if the mortgage so provides, has the power to sell by a special procedure. Section 9256, R. S. Mo. 1929, authorizes the county courts to sell property conveyed in trust and also gives the right to the county to become the purchaser at such sale. As was heretofore pointed out in *Veal v. Chariton County*, supra, that the county courts were trustees and that they had no authority to dispose of the principal and interest, other than was prescribed by law, therefore, in our opinion the payment of interest on a school loan should be required annually or when due. We do not understand what advantage could be gained by the county by taking additional security in order to protect the interest payments, because, by virtue of Section 9251, supra, additional security can be obtained at any time in order to protect the debt. No advantage accrues by virtue of taking a second mortgage because the county might find itself in a position of having to pay off the first mortgage in order to protect its second. The taking of additional security or second mortgages would only delay the payment of the interest and as the county court are trustees of the fund, such should not violate their trust in any particular so that the school funds would suffer. That is, if the county court should take a second mortgage and delay the payment of the interest and not foreclose the property or collect the interest as is required of them, it might be that the second mortgage would be worthless and by virtue thereof the fund would suffer.

It is therefore our opinion that the county court should not take second mortgages for security. It is our further opinion that the county court should use all reasonable means to provide for the payment of the principal as well as the interest and upon default should take necessary action in order to secure the loan. If a borrower from the school fund is unable to pay the interest, then no money is apportioned to the school districts so that the school districts receive no benefit from the school fund.

Yours very truly,

James L. HornBostel  
Assistant Attorney-General

APPROVED:

J. E. TAYLOR