COUNTY SCHOOL BONDS: SUCH BONDS ARE NOT NEGOTIABLE.

FILED
76

April 16, 1945

4/19

Honorable Marion Robertson
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Robertson:

Your letter of April 2, 1945 to General Taylor, requesting an opinion on the negotiability or non-negotiability of school and township bonds, has been received and assigned to the writer for the opinion requested.

Your letter states:

> "Will you please advise my office as to whether the school and township bonds can be negotiated as promissory notes are? In other words, could third parties buy the mortgage papers from the county, pay off the county loan, and continue to hold the papers in security for the loan in their own behalf?
>
> "This question arises in the instance of a married couple who must now refinance their loan and one of the parties is in the State Hospital and necessarily, a guardian would have to be appointed to refinance the loan and, frankly, these people are not financially in a position to incur this cost unless it is absolutely necessary."

Your letter speaks of "school and township bonds". It is assumed that you mean only bonds made to the County for the use of the township to which school funds belong

when such funds are loaned by the County Court of any County under the provisions of Section 10384, Article 2, Chapter 62, R.S. Mo. 1939, (Laws of 1943, p. 881). If, in fact, "township bonds" as such were intended to be included in your request, this opinion should be a divided one and in part addressed to that subject. We take it, however, that you did not intend to include "township bonds" as such in your request for the opinion. Therefore we will confine the opinion to the question of the bond required by the statute named, as evidence of indebtedness under a school fund loan.

That part of said section requiring a bond and designating the procedure when a loan of school funds is made is 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, * * * , with a bond, * * *. In all cases of loan, the bond shall be to the county, for the use of the township to which the funds belong. * * * "

It will be noted that said section requires that the bond shall be to the County, for the use of the township to which the funds belong. There are no provisions in said section or in any other section of the school loan statutes creating or setting forth words of negotiability in such bonds. The statute requires the bonds to be made to the County. It does not vest any power in County Courts to negotiate, assign or dispose of such bonds in any manner. The powers of County Courts respecting the loaning of school funds and the requiring of the bond, a mortgage on unencumbered real estate, and other security, if deemed advisable, and the method by which such bonds must be handled must necessarily be derived from the statutes. County Courts have no powers with respect thereto except what are expressly conferred upon them by the statute. The question of the extent of the powers of County Courts in preserving, lending, or collecting school funds has been before our Supreme Court in a number of cases.

In the case of Saline County et al., v. Thorp et al., 88 S.W. (2d) 183, l.c. 186, on this question our Supreme Court 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 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."

The Supreme Court made the same ruling in the case of Montgomery County v. Auchley, 103 Mo. 492, l.c. 502, where the Court said:

> "* * * The solution of this question will depend largely upon the power of the county courts in regard to school funds. That they are simply trustees of these funds will not be disputed. All powers they possess in regard to them are derived from the statutes. * * * "

One of the questions before the Court in that case was whether the County Court had the right to delegate to another any of the duties enjoined upon the Court in collecting loans made by it of the school funds. On that question and in dealing with the strictness to which the courts hold County Courts in the performance of their duties in school fund loans, the Court, l.c. 506, in the Montgomery County case, further said:

> "* * * We would regard it as hazardous to lay down the doctrine that county courts may delegate the power to approve a loan and the security for a loan. If they can delegate this power to the prosecuting attorney, they can delegate it to anybody, not under oath, whether responsible or not, whether discreet or not, and if the bars should be thrown down thus, it would not be long till there would be no trust funds to be loaned."

In the case of Ray County v. Bentley et al., 40 Mo. 236, l.c. 242, on the same point our Supreme Court said:

> "* * * In the care, management and control of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. * * * "

Section 10384, supra, sets out what shall be stated in and the conditions and terms of the bond required but nowhere therein does it provide any language that would make such bond a negotiable bond. In order for any bond to be negotiable the instrument itself must contain language making the bond negotiable. 11 C.J.S., page 435, states that rule of law as follows:

> "* * * Accordingly, the bond must contain words of negotiability, * * * and must be payable to order or to bearer. * * *"

The case of Lorimer v. McGreevy et al., 84 S.W. (2d) 667, was before the Kansas City Court of Appeals for decision. The most important point in the case, the opinion states, was whether the bonds, which were the subject of the suit, were negotiable bonds. The opinion, l.c. 676, on the point, states:

> "* * * An instrument must carry the marks or necessary elements of negotiability upon its own face, and not elsewhere. * * * "

Section 3017, Article 1, Chapter 14, R.S. Mo. 1939, our Chapter on Negotiable Instruments states the requirements of negotiable instruments to be that they:

> "* * * (4) must be payable to order or to bearer; * * * "

Section 10384 requires such bonds to be made to the County. Being without words of negotiability and being without words creating authority in the County Courts to negotiate or sell such bonds, and the County Courts being merely the trustee of such funds, it is without power to barter, assign, negotiate, or dispose of such bonds. The statute gives the County Court no authority to transfer such bonds for any purposes. Such powers would have to be expressly conferred on County Courts by statute before they could transfer or assign said bonds, and said bonds would have to contain words of negotiability themselves. Neither of these things are provided in said section 10384, or elsewhere in our statutes.

CONCLUSION.

It is, therefore, the opinion of this Department that bonds taken by a County Court as evidence of a loan of school funds cannot be negotiated as are promissory notes, and that the County Court has no power under our statutes, or otherwise, to sell such bonds or the mortgage securing such loan, so as to convey the title to such bonds to a third person to hold as security for the loan.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
ATTORNEY GENERAL

GWC:MW:ir