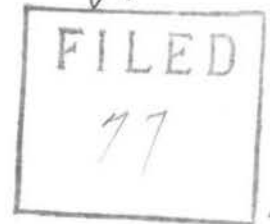


IN RE: County Court - school mortgages

- (1) Cannot accept deed but must foreclose mortgage
- (2) Has discretion when to foreclose; in meantime can accept part payment if without extending
- (3) If bid in by county, must be in name of whom

March 14, 1933.



Hon. Nat B. Rieger,
Prosecuting Attorney,
Adair County,
Kirksville, Missouri.

Dear Sir:

Answering your letter of March 8, 1933, in the first paragraph of which you ask:

"Can the County Court of a Missouri County legally accept a deed from a delinquent borrower of county general funds or County School Funds, in lieu of ordering foreclosure and public sale as provided in Section 9254?"

will say the following opinion recently rendered by this office will answer that question:

The County courts of the State get their authority largely from Section 36, Article VI of the State Constitution and from the following sections of the statute (which statute I am setting out pretty fully):

"SEC. 9243--COUNTY SCHOOL FUNDS. 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, *** belonging to the County school funds; ***"

"SEC. 9245--COUNTY COURT TO HAVE JURISDICTION OF COUNTY SCHOOL FUND. Whenever any county in this state may have separate and apart from the township funds, any public school fund arising from any source whatever, the same shall be under the jurisdiction of the county court of said county, who shall be governed in its care and investment by the same rules and regulations as govern its actions in the township funds."

Then to the same effect they have power to manage the several township funds in their counties.

"SEC. 9248--MANAGEMENT OF SCHOOL FUNDS. The County Courts, respectively shall have the care and management of the school funds of the several townships within their respective jurisdictions.***"

The county courts have power to require additional security.

"SEC. 9253-- COUNTY COURT MAY REQUIRE ADDITIONAL SECURITY. The county court shall have power, from time to time, to require additional security to be given on said bond when they, in their judgment, deem it necessary for the better preservation of the fund. ***"

"SEC. 9254--COUNTY COURT MAY MAKE ORDER OF SALE, WHEN. Whenever the principal and interest, or any parts thereof secured by mortgage containing a power to sell, shall become due and payable, the county court may make an order to the sheriff, reciting the debt and interest to be received, and commanding him to levy the same, with costs, upon the property conveyed by said mortgage, which shall be described as in the mortgage; and a copy of such order, duly certified, having 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."

The county courts have power to sell, but should make order first.

"SEC. 9252--FORM OF MORTGAGE-NOTICE OF SALE-FEES, NOW PAID. Every mortgage taken under the provisions of this chapter shall be in the ordinary form of a conveyance in fee, shall recite the bond, and shall contain a condition that if default shall be made in payment of principal or interest, or any part thereof, at the time when they shall severally become due and payable, according to the tenor and effect of the bond recited, the sheriff of the county may, upon giving twenty days' notice of the time and place of sale, by publication in some newspaper published in the county, if there be one published and if not, by at least six written or printed handbills, put up in different public places in the county, without suit on the mortgage, proceed and sell the mortgaged premises or any part thereof, to satisfy the principal and interest, and make an absolute conveyance thereof, in fee, to the purchaser. ***"

May become the owners when and how.

"SEC. 9256--AUTHORITY TO REPOSSESS PROPERTY BY PURCHASE. Whenever any property heretofore or hereafter conveyed in trust or mortgage to secure the payment of a loan of school funds shall be ordered to be sold under the provisions of this chapter, or by virtue or any power in

such conveyance in trust or mortgage contained, the county court having the care and management of the school fund or funds out of which such loan was made, may in its discretion, for the protection of the interest of the schools, become through its agent thereto duly authorized, a bidder on behalf of its county, at the sale of such property as aforesaid, and may purchase, take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of the general school funds, the property it may acquire at such sale aforesaid. The county court of any county holding property acquired as aforesaid may appoint an agent to take charge of, rent out or lease or otherwise manage the same, under the direction of said court; but as soon as practicable, and in the judgment of said court advantageous to the school or schools interested therein, such property shall be resold in such manner and on such terms, at public or private sale as said court may deem best for the interest of said school or schools.***"

You will note:

"The statutes provide that when money belonging to the school fund shall be loaned, the county court shall cause the same to be secured by a mortgage in fee on real estate situated within the county, ***and of the value of double the amount of the loan, and also with a bond and personal security. *** No authority is anywhere conferred upon the county courts to dispense with the real estate security required to be taken.***"

Lafayette County v. Hixon, 69 Mo. 561.

"The county courts of Missouri are creatures solely of statutory origin and have no common law or equitable jurisdiction.

State ex rel V. Johnson, 138 Mo. App. 306,
l.c. 314.

"In relation to these funds the county courts are trustees. They have no authority to dispose of the principal entrusted, or any of its interest, otherwise than is prescribed by law. There is no difference in this respect between the principal and interest of these funds. If they can give away the one they can give away the other *** The welfare of the State is concerned in the education (of the children. She has provided and is providing means for that purpose, not only for these now in existence, but for those who may come after them. The fund as has been said, is a permanent one, and if every man, woman, and child in a township should petition the county court to give away that which is by law entrusted to it, for the education of its children, it should without hesitation reject their prayer"

Montgomery County v. Auchley, 103 Mo. 492, l.c. 503
Veal v. County Court, 15 Mo. 412, l.c. 414

We are therefore, of the opinion that while in this instance, it might seem to be expedient and less expensive as you say, to the county to accept a deed instead of foreclosing the mortgage, yet it would be unwise, (on account of the bad precedent) and I think unconstitutional and without authority of law to do otherwise than to foreclose the mortgage as provided in the statutes above quoted.

Under no circumstances, can the County Court knock off any of the principal or interest as can be readily seen by the foregoing opinion.

In the matter of disposing of the property after the county acquires it by foreclosing, the comparatively new section of 9258 will govern and prescribe their duties regarding same.

In answer to your second question:

"Is the County Court of a Missouri County authorized to exercise its discretion and accept part payment of the interest and extension of the time, etc."

will say we are of the opinion the County Court can exercise its discretion and take such payments as they can possibly get on the interest and/or principal as in their discretion may seem for the best good of the funds either township or county if absolutely necessary to let them run awhile, but I do not think it advisable to actually extend the time of payment in view of the fact that the personal securities might be thereby released.

Your third question in regard to the event that the foreclosure is had and the property is bid in by an agent appointed according to law, in what name should the county take title, will say that Section 9248 states:

"The County Court shall have the care and management of the school funds of the several townships"

and Section 9254, says:

"When delinquent the County Court to make order *** to sell."

Section 9256 states:

"The county court has the care and management of the school funds or funds out of which loans may be made in its discretion "

And further on provides:

"And may purchase, take, hold and manage for said county to the use of the township out of the school

fund on which said loan was made, or in its own name where such loan has been made out of the general school fund.

In other words, if it is a township fund that has been loaned, it seems proper to make the deed to the county for the use of the township to which the same belongs, or if it is a county fund, then just to the county for the use of the fund to which it belongs.

Yours very truly,



GEORGE B. STROTHER,
Assistant Attorney General

APPROVED:

Attorney General

GBS:AH