

COUNTY COURTS:

SCHOOL MORTGAGES:

BACK TAXES:

County Court may not arbitrarily reduce the principal without payment.
County Court may compromise taxes under Section 9950, R. S. Mo. 1929.

June 19, 1933.



Mr. R. Wilson Barrow,
Prosecuting Attorney,
Macon, Missouri.

Dear Sir:

We are acknowledging receipt of your inquiry of June 8, 1933, in which you inquire as follows:

"I request an opinion from the Attorney General's office as to the following:

1. Whether or not the Macon County Court has any legal authority to agree with the borrower of school funds, secured by a school fund mortgage, to reduce the principal of same if it appears to the County Court that the borrower will be unable to meet his payments and pay his loan and the real estate under mortgage would not bring the amount of the loan on sale.

Section 9256 R. S. Mo. 1929, authorizes the County Court in its discretion, for the protection of the interest of the schools, to bid in such real estate upon the foreclosure of school fund mortgages and to hold and preserve said property and resell the same, but would the County Court have any authority to arbitrarily reduce the principal of such a loan or renew the same at a lower figure without first offering same for sale in foreclosure, etc.

2. Has the Macon County Court any authority to waive the payment of delinquent County taxes on property where it appears that the assessment was excessive? That is, would the County Court have any legal right to compromise any back taxes, outside of penalties, commissions, etc., authorized by the last Legislature if taxes are paid by June 30th, 1933."

County Courts are not the general agents of the County or the State and their powers are limited, and they have only such authority as is expressly granted them by Statute. *King v. Maries County*, 249 S. W. 418; *Bayliss v. Gibbs*, 251 Mo. 492. In the *Gibbs* case at page 506, the Court says:

"This Court, in numerous cases, has repeatedly held that the County Courts of respective counties of the State are not the general agents of the Counties of the State. They

are courts of limited jurisdictions with powers well defined and limited by the laws of the State; and has been said, the Statutes of the State constitute their warrant of authority and when they act outside of and beyond their statutory authority, their acts are null and void."

Article 6, Section 36 of the Constitution of Missouri provides as follows:

"In each County there shall be a County Court which shall be a Court of Record, and shall have jurisdiction to transact all County and such other business as may be prescribed by law."

In construing that Constitutional provision, the Supreme Court, in the case of *State ex rel v. Patterson*, 229 Mo. 273, at 391 held that "the County courts are denied any rights except those expressly conferred."

It will be seen from the foregoing that County Courts are clothed with limited and specifically delegated powers. Section 9256 R. S. Mo. 1929, authorizes the County Court to bid in property sold under school fund mortgages. Other Sections in the Statutes provide how they shall loan money and what security shall be taken. We find no provisions in the Statutes which would authorize the County Court to arbitrarily scale down or reduce the amount of the mortgage without receiving payments thereon.

In *Montgomery County v. Auchley*, 103 Mo. 492, it was held that the County Court had no power to reduce the interest on a school fund bond. By analogy it would appear that the County Court would have no authority to arbitrarily reduce the amount of the principal note or obligation.

It is true that the County Court is the governing body of the County, entrusted with the management of the finances as well as other duties. Its powers in regard thereto, however, must be found in the Statutes. It has the power to loan, take security and to collect the money loaned. These powers, however, do not include the power to reduce the amount of the loan without receiving payment.

The power to loan and collect given to an agent of an individual has been held not to include the power to accept a lesser amount than due. In *Ogilvie v. Lee*, 158 M. A. 492, at page 498, the court says:

"An agent authorized merely to collect or receive payment has no implied power to accept a tender of a lesser amount than that due in full payment, or release the debt in whole or in part."

The County Court has no express power to arbitrarily reduce

the loan without payment. They do have the power to loan and collect school funds. But when the Courts hold that an agent of an individual who has the power to loan and collect does not have the power to arbitrarily reduce the amount of the loan without payment, it is unlikely that the Courts would hold that the County Court having only those powers expressly conferred could arbitrarily reduce the amount of the loan under their authority to loan and collect school funds.

It is, therefore, our opinion in answer to your first inquiry that the Macon County Court will have no authority to agree with the borrower of school fund money to arbitrarily reduce the amount of the original obligation without any payment being made.

In your second inquiry you inquire whether the County Court would have any legal right to compromise any back taxes outside of penalties, commissions, etc. Section 9950 R. S. Mo. 1929, provides, among other things, as follows:

"Whenever it shall appear to any County Court --- that any tract of land or town lot contained in said 'back tax book' is not worth the amount of taxes, interest and cost due thereon, as charged in said 'back tax book,' or that the same would not sell for the amount of such taxes, interest and cost, it shall be lawful for said Court --- to compromise said taxes with the owner of said tract or lot ---."

It appears, therefore, from the foregoing Section that the County Court may compromise and accept a lesser amount of taxes than is due from lands contained in the "back tax book," when it appears that the land would not sell for the amount of such taxes, interest or costs, or that the land is not worth the amount of the taxes, interest and costs due thereon.

While the act of the Legislature in 1933, directs the waiver of certain penalties, etc., that law, however, appears to be an additional benefit conferred upon the tax-payer and does not appear to limit the power conferred upon the County Court under Section 9950.

It is, therefore, the opinion of this Department in answer to your second inquiry that the Macon County Court may compromise taxes on land contained in the "back tax book," in the two instances authorized under Section 9950, R. S. Mo. 1929.

Very truly yours,

/s/ Frank W. Hayes

Assistant Attorney General.

APPROVED:

Attorney General.
FWH:S