

SCHOOL LANDS: The provisions of Sec.166.050, RSMo, as to
SALE OF SCHOOL LANDS: sale of school lands in the sixteenth sec-
tions of each congressional township are
COUNTY COURTS: mandatory if there is no statutory exception
applicable, consequently requiring a petition
by the majority of the householders in the
congressional township wherein the land is lo-
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ated holds the proceeds of such sale until
requisition of that portion of the proceeds
belonging to the adjoining county or counties
by that county or counties.



May 15, 1959

Honorable John Hosmer
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Mr. Hosmer:

This is in reply to your letter of February 12, 1959, requesting an opinion concerning the sale of public school lands in Section 16, Township 30, Range 16, Webster County, Missouri.

It is our understanding from your letter and previous correspondence concerning the matter, that this township is evenly divided, eighteen sections of which are in Webster County, and eighteen of which are in Wright County. We also presume from your letter that the Section 16 in question lies wholly within Webster County.

From this fact situation we have phrased three questions for consideration, the answers to which seem to determine the applicable handling of the situation presented by your letter. These questions are:

1. Who may authorize sale of public school lands within Section 16, in a congressional township, the section set aside by Act of Admission for school lands?
2. Who conducts the sale of such lands?
3. How are the proceeds of such sale to be handled?

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By-passing for the moment application of the Missouri Constitution of 1945, to the situation at hand, we shall consider first the applicable statutes governing the sale of these lands as found in Chapter 166 of the Missouri Statutes of 1949.

Section 166.050, RSMo 1949, is the basic section authorizing sale of such school lands, and the sections immediately following that provision elaborate the means by which this sale is to be carried out.

Section 166.050, RSMo, reads in full as follows:

"In all congressional townships in this state in which there are fifteen householders, they shall have the right to sell their sixteenth sections, or such lands as have been or shall be selected in lieu thereof; and upon a petition of a majority of such householders, the county court shall make an order, a copy of which shall be furnished the sheriff, directing him to expose such lands to sale at the courthouse door, and while the circuit court of the county is in session, after giving twenty days' notice thereof; provided, that in any fractional township in this state wherein less than fifteen householders now or shall hereafter reside, a majority of the householders of such fractional township may petition the county court for an order to sell the sixteenth section in such township, or other lands which have been or shall be selected in lieu thereof, in like manner as herein provided."

Note that there are two factors which make this statute applicable; the congressional township containing over fifteen householders and, secondly, that the sale be conducted by the county court in response to a petition by a "majority of such householders." Likewise, note that nowhere does this section refer to a majority of house-

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holders living within the county, but only refers to a majority of householders living within the congressional township.

Congressional townships are defined in 52 Am. Jur., Towns and Townships, Section 2, page 474, which we quote in part, as follows:

"In most of the western states the term 'township' is used to denote a territory 6 miles square surveyed by the government for the purpose of entry and sale. These are called 'congressional townships.' * * *."

Missouri adheres to this definition. See *Doddridge v. Patterson, et al.*, 222 Mo. 146, 127 S.W. 72, l. c. 75, wherein our court said:

"* * * A congressional township is six miles square and contains thirty-six sections of land, * * *."

These definitions of congressional townships would clearly encompass those township citizens residing in Wright County.

Section 166.200, RSMo, Cum. Supp. 1957, provides that under certain circumstances governing boards of school districts may sell such lands. In part, this section reads:

"1. Whenever it is found that, because of extensive prairies, unoccupied lands or other local causes, the provisions of section 166.050 cannot be carried into effect, then any of the lands selected, appropriated and granted to the state of Missouri under the provisions of the Act of Congress of the 20th day of May, 1826, entitled 'An Act to appropriate Lands for the support of Schools in certain townships and fractional townships not before Provided For' and known as sixteenth section school lands, may be sold and

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conveyed by the governing board of the school district for whose benefit such sixteenth section school land is held, in the manner now or hereafter provided by law for the sale by such boards of property owned by the school district and no longer required for school purposes. The deeds of conveyance shall be executed by the president of the board of education, signed by him, with the seal of the school district attached thereto and attested by the district clerk or secretary of said board and if such district has a seal, such seal shall be affixed." (Emphasis ours)

By its own terms this provision excludes its own operation unless, for the reasons enumerated, Section 166.050, RSMo 1949, "cannot" be carried into effect. The word cannot has been defined in DiBenedetto v. DiRocco et ux., 372 Pa. 302, 93 Atl. 2d 474, 1.c.475, as follows:

"The determinative crucial word in that regard is 'cannot.' 'Cannot' connotes, not unwillingness, but inability."

Inability, and only inability, to follow Section 166.-050, RSMo, for the reasons enumerated in Section 166.200, RSMo, Cum. Supp. 1957, can the latter section be invoked. From the circumstances set out in your letters it appears, then, that the sale procedure to be followed is that set forth in Section 166.050, i.e., petition of a majority of the householders within the congressional township.

After such a petition has been submitted, Section 166.050, RSMo, directs the county court to make the order of sale and provides for notice of sale. Other sections immediately following this provision impose additional requirements as to the sale of these lands. By the terms of Section 166.060, RSMo, the sale is to be conducted in the same manner as other judicial sales. Section 166.070, RSMo 1949, provides that the sheriff shall conduct the sale and establishes minimum sale price for such land, together with provisions for expense of sale; by Section 166.080, RSMo,

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these lands may be sold once yearly; Section 166.090, provides that sale is to be by forty acre tracts or, if the situation is applicable, to lay out town lots; other subsequent sections provide provision for payment perfection of title, compensation of county officers, etc., which provisions are not here pertinent.

After the sale has been conducted, in compliance with the applicable provisions governing sale of such lands, as found in Chapter 166, we next consider how the proceeds of the sale are to be handled. Basic to the consideration of this question is the Missouri Constitution of 1945, Section 7 of Article IX, which reads in part as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund.
* * *" (underscored emphasis ours)

This provision has been interpreted by our Supreme Court as abolishing the former township school fund or, in effect, merging these funds with the county school fund. In interpreting the question of disposition of township school funds, in relation to Section 7 of Article IX of the Missouri Constitution of 1945, our Supreme Court, sitting en banc, without dissent, and speaking through Justice Hollingsworth, said, in State v. Davis, 361 Mo. 730, 236 S. W. 2d 301, 1.c. 304:

"[1] More to the point, however, is the wording of the constitutional provision itself. After directing the liquidation of all township and county school funds and prescribing the method of reinvestment thereof, it further provides that

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they shall be sacredly preserved as a county school fund. There can be no doubt of the meaning of that provision. Township and county school funds are thereby merged into one fund, to-wit: a county school fund. So, therefore, when the investments belonging to the county and township school funds of Callaway County were liquidated, in accordance with the constitutional mandate, they became a county school fund. It is unthinkable that when the electors elected to have this county school fund distributed annually, it would again amoeba-like divide into township funds and a county fund so as to require township funds to be distributed on a township basis and the county fund on a county basis. The further wording of the provision states specifically otherwise. It says: 'All interest accruing from investment of the county school fund * * * shall be distributed annually to the schools of the several counties * * *' Thus, after liquidation of the formerly separate and distinct county school fund and township school funds, both the proceeds of principal and the accruing interest become one fund, namely: the county school fund." (Emphasis by the Court)

Provisions applicable to the disposition of school funds are found in Chapter 171 of the Revised Statutes of Missouri, 1949. In general, these provisions are set up to provide for a separation of funds derived from township school lands from those of the regular county school funds, that is, a separation of funds until such time as they are merged with or become a part of the county school fund as noted in State v. Davis, quoted supra. Most germane to the question of apportionment between two counties, where the congressional township is divided among two or more counties, is Section 171.180, RSMo, which reads:

"Whenever any congressional township shall lie in two or more counties, the township school fund of such township shall be divided among the aforesaid counties in proportion to the amount

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of territory in the fractional township included in each county, as follows: The county court of the county in which section sixteen is located shall, upon a requisition of the county clerk of any county containing a fractional part of such township, issue an order transferring the amount due such county under this section into the care, keeping and custody of the county court thereof; and said fund shall be loaned, and the income derived therefrom shall be apportioned, annually, to such fractional township as though it were an entire township; and the township funds of all entire townships and all fractional townships included within the limits of any county in this state shall be handled and controlled by the proper offices of such county, as set forth in this chapter. The provisions of this section shall not apply to any congressional township intersected by the Missouri river."

This indicates that Webster County, after the sale has been conducted, would hold the proceeds of the sale until such time as the Wright County clerk requisitioned the portion of the proceeds going to that county.

CONCLUSION

Therefore, it is the conclusion of this office that the provisions of Section 166.050, RSMo 1949, as to sale of school lands in the sixteenth sections of each congressional township are mandatory if there is no statutory exception applicable, consequently requiring a petition by the majority of the householders in the congressional township wherein the land is located. The sheriff of the county wherein the land is located conducts the sale of the said school lands under the auspices of the county court in the county wherein the land is located. The county court, where the land is sold, holds the proceeds of the sale until requisitioned by the adjoining county

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wherein a portion of such congressional township lands are located, and the portion of the proceeds of the sale belonging to that county are thereafter transferred to that county.

The foregoing opinion, which I hereby approve, was prepared by my assistant J. B. Buxton.

Very truly yours,

John M. Dalton
Attorney General

JBS:lc