

COUNTY JUDGE'S QUALIFICATIONS:
MORTGAGOR UNDER SCHOOL FUND
LOAN:

The fact that a county
judge elect has school
funds borrowed from the
county does not disqualify
him from being elected as
a county judge.

November 22, 1940

11/22



Mr. Alfred F. Moeller
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Ste. Genevieve, Missouri

Dear Sir:

This is in reply to yours of recent date wherein
you request an opinion from this Department on the
following statement of facts:

"I would like to have your opinion
as to whether the fact that a Judge-
elect of the County Court has a
school fund loan on his property
would disqualify him from assuming
said office."

The qualifications of a county judge are prescribed
by Section 1824, R. S. Mo. 1929, in the following language:

"* * * Every judge of * * * a county
court shall have attained the age of
twenty-four years, and shall have
been a citizen of the United States
five years, and shall have been a
resident of the county in which he
may be elected for one year next
preceding his election; * * *."

On the question of the authority of a county officer
to borrow school funds, we find that Section 9244, R. S.

Mo. 1929, provides as follows:

"The county court shall not loan any money belonging to the school fund to any officer of the county or his deputy nor shall such officer or his deputy be accepted as security on the obligation given by the person borrowing. Any officer of the county who shall violate the provisions of this section by authorizing any such loan or drawing any warrant for moneys loaned in violation of this section shall be held responsible for the sum so loaned, with interest thereon to be recovered in the name of the county to the use of the district whose fund has been so used."

It will be noted that the provisions of this section do not prohibit the officer who might borrow school funds in violation of said section from continuing in office. The penalty provided by this section, if it should be held as a penalty, is that the county officer who authorizes a loan in violation of the section is held responsible for the sum loaned with interest thereon. We are not holding in this opinion that an officer would be subject to removal for making a loan in violation of the section.

The case which you have submitted is one in which the borrower was not an officer at the time the loan was made and, therefore, would not come within the provisions of said Section 9244. In the case of State ex Inf. Mitchell, ex rel. Goodman v. Heath, 132 S. W. (2d) 1001, 1. c. 1004, the Court announced the rule as to the construction which should be placed on such statutes in the following language:

"* * * 'statutes imposing qualifications should receive a liberal construction in

favor of the right of the people to exercise freedom of choice in the selection of officers.' 46 C. J. 937, Sec. 32. The Missouri decisions have given a liberal construction to this and similar sections prescribing requirements of eligibility to elective offices."

To prohibit a person from holding an elective office, who has the statutory qualifications for that office, because he has school moneys borrowed from the county, would be denying the people the right to exercise their freedom of choice in the selection of their officers and would be placing too strict a construction on said Section 9244.

CONCLUSION.

Therefore, it is the opinion of this Department that if the county judge elect possesses the qualifications prescribed by statute, the fact that he has a school fund loan placed on his property before he was elected would not disqualify him from assuming the duties of county judge, the office to which he has been elected.

Respectfully submitted,

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APPROVED:

COVELL R. HEWITT
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