

1. COUNTY COURTS -1. Can reduce rate of interest below
 2. PUBLIC OFFICERS - 6% by order on protested warrants for accounts accruing after order.
2. Cannot agree to less than 6% on protested salary warrant.

May 19, 1942

Honorable G. A. Danner
Treasurer
Ripley County
Doniphan, Missouri

6-3



Dear Sir:

We are in receipt of your letter of May 19, 1942, in which you request an official opinion, as follows:

"The County Court of Ripley County has made an order setting the interest on School Fund Loans at 5% per annum.

"The Court has also made an order setting the rate of interest on protested warrants issued on Ripley County at 5%. The Prosecuting Attorney of this County informs me that the County Court has no authority to set the rate of interest on said warrants at less than 6%.

"I desire information from you as to whether in view of the Court Order, I should pay the interest at 5% or at 6% on the protested warrants of Ripley County on the various revenue funds."

Since you mentioned in the first paragraph of your request that the county court has set the rate of interest of school loans at 5% per annum, we are setting out the law applicable to such a loan, which permits the county court to set the rate of interest at 5% per annum on such a loan.

Section 10381 R. S. Missouri, 1939, gives the county courts the care and management of the school

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funds.

Section 10376 R. S. Missouri, 1939, limits the rate of school loans between four and eight per cent.

Section 10384 R. S. Missouri, 1939, provides that when the school fund shall be loaned out by the county courts under the following specification:

"* * * In all cases of loan, the bond shall be to the county, for the use of the township to which the funds belong, and shall specify the time when the principal is payable, rate of interest and the time when payable; * * * ."

Under the above partial section the county court sets the rate of interest and therefore it is within its power to set the rate of school fund loans at 5% per annum.

Also in the second paragraph of your request you state that the county court had set the rate of interest on protested warrants issued on Ripley County at 5%.

Section 13833 R. S. Missouri, 1939, reads as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

Under the above section if there is no money in the treasury for the payment of a warrant that has been issued by the county court, the treasurer shall certify that there is no money in that fund to pay the warrant, which is the same as the protesting of a county warrant.

Until the warrant is presented for certification, or protest, the county is not liable for the interest on the claim. It was so held in the case of Skinner V. Platte County, 22 Mo. 437.

Section 3226 R. S. Missouri, 1939, reads as follows:

"Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made."

Under that section when an account has become due, and demand of payment is made, and no other rate is agreed upon, the account bears interest at the rate of six per cent per annum from the date of the demand.

Under Section 13833, supra, which applies to county warrants, no rate of interest is mentioned and, therefore, the rate of interest on a protested county

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warrant cannot be more than six per cent, nor less than six per cent. That the rate of interest is six per cent on a county warrant was held in the case of *Isehour v. Barton County*, 190 Mo. 163, where the court said at l. c. 170:

"County warrants are creatures of the statute, and can only be issued in accordance therewith, but when no rate of interest is prescribed upon their face, they bear interest at the rate of six per cent per annum, as provided by section 3705, Revised Statutes 1899, after presentation to the treasurer of the county by which issued, and failure to pay because of there being no money in the treasury for their payment. (*Robbins v. Lincoln County Court*, 3 Mo. 57; *Skinner v. Platte County*, 22 Mo. 438; *State ex rel. v. Trustees*, 61 Mo. 155.) * * * * ."

Section 3226, supra, contains the following phrase:

"Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, * * * * ."

County Courts are declared to be courts of record by Section 36, Article VI of the Constitution of Missouri.

In your request you have stated that the county court made an order setting the rate of interest on protested warrants issued on Ripley County at five per cent. Since the county court is a court of record this order is a public record and any persons transacting business with the county court, such as sales of supplies, and who thereby allows the county court to become indebted to them,

should take notice of the order made by the county court. Since the order has been made by the county court setting the rate of interest on protested warrants at five per cent per annum, a person who deals with the county court is agreeing as to the rate of interest of the warrant if it is protested.

The above holding only applies where supplies have been sold to the county after the date of the order of the county court reducing the rate of interest on protested warrants from the lawful rate, where the statutes set out no rate, to five per cent per annum.

The above ruling does not apply to public officers elected or appointed for the reason that the Supreme Court of this State has held that it would be against public policy to permit public officers elected, or appointed, to receive, by agreement or otherwise, a less compensation, for their services, than fixed by law.

It was so held in the case of Reed v. Jackson County, 142 S. W. (2d) 862, Par. 2,3, where the court said:

"In view of our statute and court decisions, especially the Rothrum case, it seems clear that to permit public officers, elected or appointed, to receive, by agreement or otherwise, a less compensation for their services than fixed by law, would be contrary to the public policy of the state. * * * *"

Since the legislature did not see fit to set a rate of interest for protested county warrants, and, since the Supreme Court has held that public officers cannot, by agreement, receive a less compensation for their services, then we must revert to the general law which sets the rate of interest on past due claims, where there is no agreement on the rate, at six per cent per annum.

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CONCLUSION

In view of the above authorities, it is the opinion of this department that the county court of Ripley County cannot make an order reducing the rate of interest on protested warrants issued on Ripley County at a rate of interest of five per cent on accounts consummated and which were due and payable previously to the time of the making of the order.

It is further the opinion of this department that the county court of Ripley County can make an order reducing the rate of interest on protested warrants from six per cent to a rate of five per cent per annum on accounts consummated and which became due and payable after the date of the making of the order, for the reason that the rate of five per cent has been agreed upon when the holder of the warrant transacted business with the county court.

It is further the opinion of this department that the county court cannot, by an order, reduce the rate of interest from six per cent to five per cent per annum on protested warrants for salary of public officers of the county who are either elected or appointed and the protested warrants for such salary must bear six per cent per annum.

Respectfully submitted

APPROVED:

W. J. BURKE
Assistant Attorney General

ROY McKITTRICK
Attorney General of Missouri

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