

COUNTY COURT: County school fund loan may be made on any real estate in county. County court without authority to loan money from this fund on land outside county.

May 19, 1943

Honorable G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri



Dear Mr. Marr:

This office is in receipt of your letter of recent date, in which your request for an opinion reads as follows:

"The County Court has granted a school fund loan on a farm that lies in Morgan County and an adjoining county. Now they raise the question as to whether this is a proper loan under the statutes relating to school fund loans.

"Ordinarily the statutes say to loan on land within the county.

"If the county court has to foreclose a loan on land in two counties, would the sheriff of Morgan County have the legal right to go over in another county and advertise the school fund mortgage sale in the adjoining county, and be able to get the county a good title for the foreclosure?

"If the county can make such a loan in an adjoining county, it just seems that they could make a loan in another county.

"In looking through the statutes, I cannot find any authority or leeway for making a school fund loan in two counties.

"The county court requests that I get your opinion on the matter, to see if they should go ahead and make this loan under the facts stated."

The writer has examined the authorities for the opinions in this State, and as a result of that examination we cite the following statutes and decisions:

At Section 10378 R. S. Missouri, 1939, the county court of each county is given jurisdiction over the county school fund. We do not set out these sections in full, but merely give them for your convenience and information. Also, at Section 10376 R. S. Missouri, 1939, the statute has this to say concerning 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, the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any breach of the penal or military laws of this state, and all moneys which shall be paid by persons, as an equivalent for exemption from military duty, shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund, the income of which fund shall be collected annually and faithfully appropriated for establishing and maintaining free public schools in the several counties of this state."

The first statute to which your attention is directed is Section 10384 R. S. Missouri, 1939, which concerns itself with the security for loans made by the county court, and we

set out in detail this section, which reads as follows:

"When any moneys belonging to said funds shall be loaned by the county courts, they shall cause the same to be secured by a mortgage in fee on real estate within the county, free from all liens and encumbrances, of the value of double the amount of the loan, with a bond, and may, if they deem it necessary, also require personal security on such bond; and no loan shall be made to any person other than an inhabitant of the same county, nor shall any person be accepted as security who is not at the time a resident householder therein, who does not own and is not assessed on property in an amount equal to that loaned, in addition to all the debts for which he is liable and property exempt from execution. 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; that in default of payment of the interest, annually, or failure by principal in the bond to give additional security when thereto lawfully required, both the principal and interest shall become due and payable forthwith, and that all interest not punctually paid shall bear interest at the same rate of interest as the principal. But before any loan shall be effected, the borrower shall file with the county court an abstract of title at the time he files his bond and mortgage to the real estate which is to be mortgaged."

Along this same idea, your attention is directed to Section 10386 R. S. Missouri, 1939, which concerns itself with the capital of township funds and how they are to be invested. The matter of additional security and other items are disposed of by this statute, which is merely cited. Also looking at Article XI, Section 10, Missouri Constitution, page 156 c, we find:

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"All county school funds shall be loaned only upon unencumbered real estate security of double the value of the loan, with personal security in addition thereto."

With respect to any orders of the court relative to the sale of lands which may be foreclosed, we find in Section 10387 R. S. Missouri, 1939, that the court may make orders and as we have previously found that in doing so it is a court with limited jurisdiction. We conclude that no order involving real estate outside of the jurisdiction of the court can be of any effect.

Sustaining the idea that the county court is one of limited jurisdiction, we ask that you consult the Constitution, Article IV, Section 36, page 121c. Also, we give two decisions which contain the last word as it appears to apply to the question under consideration. St. Louis County v. Menke, 95 S. W. (2d) 818, and Saline County et al v. Thorp, 88 S. W. (2d) 183. This latter decision, by Commissioner Hyde, at page 186, has discussed in detail all of the questions brought up by you and they are adequately disposed of in that opinion.

We further find that the county courts are not general agents of the counties of this State, but courts with limited jurisdiction, and their acts outside of statutory authorization are null and void. Bayless v. Gibbs, 158 S. W. 590, 251 Mo. 492; Sturgeon v. Hampton, 88 Mo. 203; King v. Maries County, 249 S. W. 418; 297 Mo. 488; State ex rel. v. Clinton County Court, 185 S. W. 1149, 193 Mo. 373.

#### CONCLUSION

From our examination of the statutes and the authorities as they bear on the questions raised, we therefore conclude that a county court has no authority to loan school fund moneys on real estate outside of the county; that the court, as such, is a trustee of school funds and has a very limited jurisdiction in such matters; that any loan made on land outside the jurisdiction of the court would be null and

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void; and further, no order of the court, directed to the sheriff involving matters beyond the jurisdiction and authority of the court would be valid.

Respectfully submitted

L. I. MORRIS  
Assistant Attorney General

APPROVED BY:

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ROY MCKITTRICK  
Attorney General

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