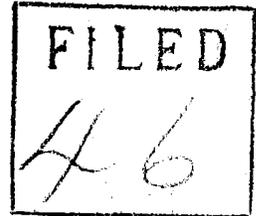


COUNTY SCHOOL FUND:)
LIQUIDATION AND DISTRIBUTION:) If the proposal to distribute the
) county school funds is approved,
) such distribution shall be made as
) soon as practicable or within a
) reasonable time.

May 2, 1947



Copy to Mr. Jones

Honorable Roy A. Jones
Prosecuting Attorney
Johnson County
Warrensburg, Missouri

Dear Mr. Jones:

We have your letter of April 25, 1947, requesting an opinion from this department, which reads as follows:

"Pursuant to the Provisions of Senate Bill No. 186 passed by the 63rd General Assembly, a petition has been filed having the necessary number of signers and our county court has authorized a special election for Tuesday, May 27, 1947, for the purpose of deciding whether or not there shall be an annual distribution of the capital of the liquidated county and township school funds of Johnson County, Missouri.

"At the present time, \$152,600.00 of these funds are invested in U. S. Government bonds series "G". We have the sum of \$1441.54 not invested.

"If it is mandatory that the county court should request redemption of the funds invested in the series "G" bonds and distribute the proceeds forthwith, in the event the proposal carries, we will sustain a loss of \$3,357.20 as will be shown by the enclosed sheet.

"I would like to have your opinion as to whether or not we can hold these bonds

until maturity before making distribution or if we must redeem the bonds and take the loss in the event the proposal carries."

We are enclosing herewith a copy of our opinion rendered to Honorable Emory L. Melton, Prosecuting Attorney of Barry County, under date of February 7, 1947, holding that the capital of township and county school funds, which has been liquidated according to Section 7 of Article IX of the 1945 Constitution, and immediately reinvested in government bonds, may again be liquidated by the county court at any time such action is authorized by a majority of the voters voting in an election called to determine whether or not the capital of said fund shall be distributed annually to the schools of the county as provided by law.

The question now presented is, in the event such an election decrees distribution, is it mandatory for the county court to redeem the government bonds as soon as possible or should the county hold said bonds until maturity, which is 12 years in this case, before making the distribution?

Section 7 of Article IX of the Constitution is, in part, as follows:

"* * * Any county or the city of St. Louis by a majority vote of the qualified electors voting thereon may elect to distribute annually to its schools the proceeds of the liquidated school fund, at the time and in the manner prescribed by law. * * *"

Section 10376.2, Mo. R.S.A., which is one of the provisions enacted by the Legislature to implement the above constitutional provision, is, in part, as follows:

"* * * Such special election shall be governed in all respects by the general election laws except wherein such general election laws are in conflict with this article. The results of the balloting at each election precinct shall be certified by the judges of election of such election precinct and attested by the clerks and transmitted to the body having control of the capital of the county and

township school funds, which said body shall, from such results so certified and attested, within ten days, determine whether the proposal to distribute annually the liquidated capital of the county and township school funds has received a majority of the votes cast in the county or City of St. Louis wherein such election shall have been held. If the proposal to distribute annually the capital of the liquidated county and township school funds shall receive a majority of the votes cast, the body having control of such county and township school funds shall proceed to thereafter distribute annually such liquidated funds to the school districts. The accumulated balance of such funds shall be apportioned on or before August 31 of each year, until such funds are liquidated and said apportionment shall be based upon the last enumeration on file in the office of the county clerk. * * *

The answer to the question propounded depends upon the construction given the provision "If the proposal to distribute annually the capital of the liquidated county and township school funds shall receive a majority of the votes cast, the body having control of such county and township school funds shall proceed to thereafter distribute annually such liquidated funds * * *." We submit that the phrase "shall proceed to thereafter distribute annually," should be interpreted as it reads, thus calling for annual distribution to begin as soon as practicable or within a reasonable time after the result of the election has been determined. This view is supported in *Donnelly Garment Co. v. Keitel*, 193 S. W. (2d) 577, where the court said at page 581:

"* * * And a primary rule of construction of a statute is to ascertain from the language used the intent of the lawmakers if possible, and to put upon the language its plain and rational meaning in order to promote the object and purpose of the statute. *Haynes v. Unemployment Compensation Commission*, supra, 183 S. W. 2d loc. cit. 81, and cases there cited."

And also in the case of O'Malley v. Continental Life Ins. Co., 75 S. W. (2d) 837, l. c. 839:

"The legislative intent in the enactment of the law is to be sought and effecuated. This is the rule of first importance in statutory interpretation. To ascertain such intent we invoke as aids such of the auxiliary rules of interpretation as may seem to bear with incidence as direct as may be upon the matter in hand. Briefly stated, these in substance recognize and require that the language of the act be considered (25 R. C. L., Sec. 216, p. 961); that each word be accorded its ordinary meaning, generally speaking; * *"

Following the above decisions, the intent of the Legislature is found by giving the language of the statute its ordinary and rational meaning.

We further submit that the above quoted phrase is mandatory in requiring the county court to act within a reasonable time. The use of the word "shall" in said phrase and the frequent use of the words "distribute annually" make this construction clear. The court said in Warrington v. Bobb, 56 S.W. (2d) 835, at page 837:

"* * * in determining whether a statute is directory or mandatory, the prime object is to ascertain the legislative intention disclosed by the statutory terms and provisions in relation to the object of the legislation. Provisions relating to the essence of the thing to be done, that is, matters of substance, are mandatory, while, generally, statutory provisions not relating to the essence of the thing to be done, and as to which compliance is not a matter of substance, are directory. State ex rel. v. Brown, 326 Mo. 627, 33 S. W. (2d) 104, 107."

And also in the case of State v. Flynn, 147 S. W. (2d) 210, where it was said, at page 211:

"* * * There is no absolute test by which the question here presented may be resolved, but in passing upon the matter (whether statute is directory or mandatory), the prime object is to ascertain the legislative intent from a consideration of the statute as a whole, bearing in mind its object and the consequences that would result from construing it one way or the other. State ex rel. Ellis v. Brown, 326 Mo. 627, 33 S. W. 2d 104. * * *"

The provision calling for the time of distribution certainly is a matter of substance and relates to the essence of the thing to be done. The context of the statute shows that the primary object or purpose of said statute is to make possible the distribution of said fund to the schools. That is why the people vote on this proposition. And if it was not intended that such distribution should be made as soon as practicable or within a reasonable time, the people would not petition and vote at that particular time. The spirit of the law speaks of such distribution and we believe that there is no possible ground upon which to base the contention that distribution should be delayed until maturity of said bonds, that is, for 12 years.

Of course, this conclusion will make reliquidation of said fund through redemption of the government bonds necessary, but it must be presumed that the people are aware of what they are voting for and the benefits or complications that may result from the approval of such a proposition.

Conclusion

Therefore, it is the opinion of this department that if the proposal to distribute annually the capital of the liquidated county and township school funds which has been reinvested in government bonds as a county school fund, shall, under the provisions of Sections 10376.1 and 10376.2, Mo. R.S.A., receive a majority of the votes cast, the body having control of such fund shall proceed as soon as practicable or within a reasonable

Hon. Roy A. Jones

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time to reliquidate said fund through redemption of said government bonds so that said fund may be distributed to the school districts.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

DD:EG
Enc.