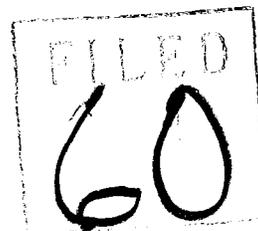


COUNTY SCHOOL FUNDS:  
LIQUIDATION:  
ELECTION:

Capital of township and county school funds invested in government bonds can be liquidated before maturity. By the petition of the voters county court must call special election for liquidation of school funds even though this expenditure has not been provided for in county budget.

February 7, 1947

Honorable Emory L. Melton  
Prosecuting Attorney  
Barry County  
Cassville, Missouri



Dear Sir:

We hereby acknowledge receipt of your letter of January 31, 1947, requesting an opinion from this department, which reads as follows:

"The question has arisen in this county with reference to the construction of MRSA Sections 10376.1 and 10376.2 wherein it is provided for the election at which the voters will determine for or against annual distribution of the capital of the liquidated county school funds.

"At present this county has some \$60,000 invested in Series G. Government Bonds. Should the election decree distribution of these funds would it be mandatory that the county court liquidate these Government Bonds which have some 18 years to run yet before maturity or would the distribution be only of that portion of the funds which become liquidated over a period of years according to the obligation.

"Should the petitions be presented to the county court as provided by the above named sections is it mandatory that the election be held as provided for by law even though there has been no provisions made in the county budget for such expenses?"

The first question presented here is in regard to the action that the county court is compelled to take with respect

to the capital of the liquidated township and county school funds after the majority of the voters voting thereon have voted to distribute said funds according to the provisions of Section 10376.1 and Section 10376.2, Mo. R.S.A. Your attention is directed to Section 7, Article IX of the 1945 Constitution of Missouri, which provides, in part:

"\* \* \* 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. \* \* \*"

A similar question was presented and an opinion from this department rendered to the Honorable G. R. Chamberlain, Prosecuting Attorney, Harrisonville, Missouri, under date of March 19, 1945. There the county court was in doubt as to when it should begin liquidating the county loans referred to in Section 7 of Article IX of the Constitution. That opinion construed Section 7 of Article IX to mean that such liquidation should occur only at the time when the principal became due according to the tenure of the instrument evidencing the loan subsequent to the effective date of the Constitution. The ruling of that opinion was with respect to county loans and was apparently based on the rule set out in Section 5 of the Schedule of the 1945 Constitution that existing contract obligations were not impaired by the adoption of the Constitution.

However, the reason for this ruling is not present in our case as here the funds are invested in government bonds which may be cashed in at any time before maturity. Therefore, the capital of the 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.

In answering the second question, your attention is directed to Section 10376.2, Mo. R.S.A., which is in part as follows:

"Said proposal shall be submitted at a special election to be held for that purpose within sixty days after the filing of the petition therefor. \* \* \* \* \*"

We think the wording in this provision is mandatory and requires a special election to be called within a certain time after the filing of the petition as provided in Section 10376.1.

The rule to be applied in determining whether this provision is mandatory or directive is set out in the case of Warrington v. Bobb, 56 S.W. (2d) 835, page 837:

" \* \* \*and, 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, at 211:

"Relator's position is that the provisions of Section 15 supra, which require that registration shall be closed fifteen days preceding a general election, and forty days prior to a municipal election, are mandatory, while respondent contends the provisions are merely directory. There is no absolute test by which the question here presented may be resolved, but in passing upon the matter, 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. \* \* \*"

Following the rule as set out in the above cases we must find the intent of the General Assembly by considering the statute as a whole in connection with the overall plan. We see then that the General Assembly set up a procedure by which the capital of the certain school funds could be liquidated and distributed to the schools of the county according to the discretion of the voters of the county. It was evidently the intent of the General Assembly to leave this matter entirely to the discretion of the voters, and further, that when these voters

petition for such procedure to be put into operation, this should be done in the manner and within the time as provided by law.

This is further supported by 29 C.J.S., Section 67, page 91, which is in part as follows:

"\* \* \* Whether a statutory provision with respect to an election is mandatory or directory depends on the legislative intent. Ordinarily provisions of an election law are mandatory if enforcement is sought before election in a direct proceeding for that purpose; \* \* \*"

Even if there has been a failure to budget funds for such special election, this does not warrant the county court in refusing or failing to call said election. The provisions calling for such election are mandatory and cannot be disregarded.

The rule is set out in the case of Gill v. Buchanan County, 142 S. W. (2d) 665, at 668-669:

"\* \* \* Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. Instead, it must be the discretionary obligations incurred for other purposes which are invalid, rather than the mandatory obligation imposed by the same authority which imposed the budget requirements. We, therefore, hold that a county court's failure to budget the proper amounts necessary to pay in full all county officers' salaries fixed by the Legislature, does not affect the county's obligation to pay them."

And also in the case of State v. Smith, 182 S. W. (2d) 571, at 574:

"\* \* \* Sec. 10907 of the Budget Law cannot be construed as making invalid, contracts or agreements for which express authority of law is given specifically by other later statutes.\* \* \*"

If a sum sufficient to conduct such special election was not set aside in classification two of the county budget which is to include expenditure for elections, arrangements must necessarily be made to put this expenditure under either classifications 5 or 6 or to provide for it in some other manner.

Conclusion

Therefore, it is the opinion of this department that the capital of township and county school funds which is invested in government bonds can be liquidated as provided by law before maturity of such bonds. It is further the opinion of this department that upon petition of the voters of any county or the City of St. Louis as provided by Section 10376.1, Mo. R.S. A., it is mandatory that the county court call a special election as provided by Section 10376.2, Mo. R.S.A., even though funds have not been set aside in the county budget for this purpose.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General