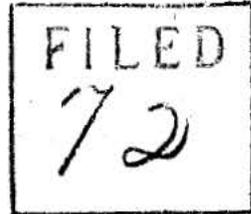


SCHOOL FUNDS:

Type of securities in which county and township school funds may be invested.

COUNTY AND TOWNSHIP:

January 23, 1947



Copy by [unclear]
Mr. O. F. Preusse
County Treasurer
Perry County
Perryville, Missouri

2/6

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this department relative to the investment of county and township school funds. The questions read as follows:

"1. Perry County has authorized a bond issue for the erection of a county hospital under the provisions of Sections 15192 to 15208 of the RS Missouri 1939. Can the school funds be invested legally in such county hospital bonds?

"2. What is to be included within the term 'approved bonds of any city or school district thereof'?"

The county court derived its authority for investing county and township school funds from the Constitution and statutes. In the case of Molt County v. Harmon, et al., 59 Mo. 165, the Supreme Court, in discussing the powers and duties of county courts in the management of school funds, said at l.c. 171:

"* * * In the care and management of the fund, the County Court acts purely in an administrative capacity, not as the agent of the county, but in the performance of a duty specifically devolved upon it by the laws of the State. There is nothing judicial in the exercise of its functions in this respect. The County Court does not derive its authority from the county, and it can exercise only such powers as the legislature may choose to invest it with."

Therefore, we will refer to the statutes and the Constitution to ascertain what powers the county courts have with respect to investing county and township funds.

I note in your inquiry that you refer to Sections 15192 to 15208, R. S. Mo. 1939. From an examination of the laws passed by the 63rd General Assembly, I find that the Legislature, by House Bill 756, repealed Sections 15192 to 15197, inclusive, and enacted four new sections in lieu thereof. Section 15192 of said bill provides as follows:

"The county courts of the several counties of this state are hereby authorized, as provided in this Article, to establish, construct, equip, improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties. Provided that in all cases where proceedings for the issuance of county bonds have been initiated to the extent that petitions required by existing law have been circulated and filed with the county court containing the signatures of the requisite number of qualified petitioners and an order by the county court has been made pursuant thereto calling an election and fixing the date thereof under any statute repealed hereby, such election shall be held and the results thereof canvassed and certified pursuant to the statutes under which such proceedings were initiated, and if two-thirds of the qualified voters of the county voting thereon at such election shall vote in favor of incurring such indebtedness and of issuing bonds therefor, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated, and such proceedings and such bonds, so issued, shall be valid; or where the issuance of such bonds has been authorized at an election held prior to the effective date of this act, such bonds may be issued, sold and delivered under the provisions of the statute pursuant to which such proceedings were initiated."

Both the old act and the new act, in substance, authorize county courts to establish and maintain public hospitals and to issue bonds therefor when authority has been conferred upon them by a vote of the people. On the question of whether county and township school funds may be invested in county hospital bonds, we find that Section 7 of Article IX of the Constitution of 1945 sets out the type of securities in which such funds may be invested. It reads in part as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund.* * *"

The 63rd General Assembly by Senate Bill 162 enacted enabling legislation for the provisions of said Section 7. Section 10376 of said Senate Bill reads in part as follows:

"It is hereby made the duty of the several county courts of this state to collect diligently and, when authorized by law, to invest securely the proceeds of all moneys, stocks, bonds and other property belonging to or accruing to the county school fund. On and after the effective date of this act, all real estate loans and investments now belonging to the county school funds, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said school fund of the county shall be reinvested in registered bonds of the United States, or in bonds of the state, or in approved bonds of any city or school district thereof, or in bonds or other securities the payment

of which is fully guaranteed by the United States Government, and shall be preserved as a county school fund; * * *"

Section 10383 of the same bill contains the same provisions as to the type of securities in which the county and township funds may be invested. From an examination of said Section 7 of Article IX of the Constitution of 1945, and of Sections 10376 and 10383 of Senate Bill 162, passed by the 63rd General Assembly, it will be found that securities such as county hospital bonds are not included within the class of bonds in which the school funds may be invested. Since the county courts are only authorized to invest these funds in securities provided for in the Constitution and in the law, then the county court would not be authorized to invest county and township school funds in county hospital bonds.

On the question of "what is to be included within the term 'approved bonds of any city or school district thereof'", we are assuming that you are inquiring about what is meant by the term "approved bonds" and whether city or school district bonds are securities in which such funds may be invested. The framers of the Constitution and the lawmakers, in providing that the bonds of cities or school districts must be approved bonds before the funds may be invested in them as securities, must have had in mind the provisions of Section 3306, R. S. Mo. 1939. This section reads in part as follows:

"Before any bond, hereafter issued by any county, township, city, town, village or school district or special road district or by virtue of the provisions of articles 1, 3, 6, 7 and 8, Chap. 79, R. S. 1939, for any purpose whatever, shall obtain validity or be negotiated, such bonds shall first be presented to the state auditor, who shall register the same in a book or books, provided for that purpose, in the same manner as state bonds are now registered, and who shall certify by endorsement of such bond that all conditions of the laws have been complied with in its issue, if that be the case, and also that the conditions of the contract, under which they were ordered to be issued, have also been complied with and the evidence of that fact shall be filed and preserved by the auditor.* * *"

Section 3307, R. S. No. 1939, makes the following provision relating to the investment of funds held by trustees in securities which have been approved or registered by the State Auditor. This section reads as follows:

"Any and all bonds registered by the state auditor under the provisions of the laws of this state, and any and all bonds that have been or may be duly issued by any county or city having a population of over 300,000 inhabitants, whereon there is no default in payment of principal or interest, may be accepted as good and lawful security for the investment of the capital stock, surplus and reserve funds of any insurance or fraternal benefit society incorporated in or authorized to transact business in this state, or trust company authorized to transact business in this state. The state superintendent of insurance is hereby authorized to accept such bonds as security or pledge in all cases where such pledge or security is required by the laws of this state. Such bonds may be accepted by the state treasurer as security for the deposit of any and all state funds, and by county and city treasurers as security for the deposit of any and all county and city funds. They shall also be eligible for the investment of any funds in the possession of any administrator, executor, guardian, curator, trustee and all other persons sustaining fiduciary relations. Such investments may be made without an order of court first had and obtained, and without incurring liability for loss, except in case of inexcusable negligence."

On account of the limitations prescribed in said Section 7 of Article IX of the Constitution of 1945, and in said Senate Bill 162, we do not think that county and township school funds could be invested in every type of bond which is registered by the State Auditor.

The authority for issuing bonds by a city or school district is found in Sections 26 (b), 26 (c), 26 (d) and 26 (e) of Article VI of the Constitution of 1945. These sections read as follows:

"Sec. 26 (b) Any county, city, incorporated town or village, school district or other political corporation or subdivision

of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes.

"Sec. 26 (c) Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five per centum of the taxable tangible property shown as provided in section 26 (b).

"Sec. 26 (d) Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted not exceeding in the aggregate an additional ten per centum of the value of the taxable tangible property shown as provided in section 26 (b), for the purpose of acquiring rights of way, constructing, extending and improving the streets and avenues and acquiring rights of way, constructing, extending and improving sanitary or storm sewer systems. The governing body of the city may provide that any portion or all of the cost of any such improvement be levied and assessed by the governing body on property benefited by such improvement, and the city shall collect any special assessments so levied and shall use the same to reimburse the city for the amount paid or to be paid by it on the bonds of the city issued for such improvement.

"Sec. 26 (e) Any city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an indebtedness in an amount not to exceed an additional ten per centum of the value of the taxable tangible property shown as provided in section 26 (b), for the purpose of paying all or any part of the cost of purchasing or constructing waterworks, electric or other light plants to be owned exclusively by the city, provided

the total general obligation indebtedness of the city shall not exceed twenty per centum of the assessed valuation."

Bonds issued under authority of those sections are registered and approved by the State Auditor as is provided for in said Section 3306, supra.

The question might arise as to the authority to invest school funds in the revenue bonds provided for by Section 27 of Article VI of the Constitution of 1945 which reads as follows:

"Any city or incorporated town or village in this state, by vote of four-sevenths of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any revenue producing water, gas or electric light works, heating or power plants, or airports, to be owned exclusively by the municipality, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the municipality from the operation of such utility."

The Missouri Supreme Court, in the case of State ex rel. City of Fulton v. Smith, 194 S.W. (2d) 302, had before it for consideration the question of the registration of revenue bonds issued by authority of said Section 27. At l.c. 306, the court, in passing on this particular question, said:

"It is perfectly clear that Sections 3303, 3304 can have no reference to revenue bonds. They relate solely to bonds payable through the collection of taxes. It is, therefore, impossible to harmonize them with Section 3306, if the latter be applied to revenue bonds.* * *"

Speaking further on the question of the reason that revenue bonds were not required to be registered by the State Auditor under said Section 3306, the court made this further statement:

"* * * The preferred position thus accorded to bonds validated through registration by the state auditor, payable in the exercise of the taxing power, the holders thereof being possessed of well understood and long defined remedies, is not to be extended, in the absence of a manifest legislative intent so to do, to another and different type of security not constituting a debt or liability within the ordinary meaning of those terms, and to the payment of which the taxing power may not be pledged, and the issuing body does not agree to pay except out of revenues, and thus made wholly dependent upon the successful operation of the utility improved with the proceeds."

From this opinion, we think there is no question but that county and township school funds may not be invested in the revenue bonds authorized by said Section 27 of Article VI because such bonds are not registered and approved by the State Auditor.

CONCLUSION

From the foregoing, it is the opinion of this department that: (1) county and township school funds may not be invested in county hospital bonds, and (2) that the county and township school funds may be invested in city or school district bonds of such county, provided such bonds have been approved and registered by the State Auditor as is required by Section 3306, R. S. No. 1939.

Respectfully submitted,

FRANK E. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM