

SCHOOLS:
COUNTY SCHOOL FUND:
COUNTY COURT:

County court is not authorized to pay an agent for procuring insurance or collecting on delinquent school fund loans.

Copy to Mr. John

May 13, 1947

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Honorable Charles H. Rehm
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri

Dear Sir:

This is in reply to your letter of recent date regarding an official opinion rendered by Mr. S. V. Medling, Assistant Attorney General, in November, 1937, which held that the county court could employ an agent to procure insurance and collect on delinquent school fund loans. Your letter reads as follows:

"In November, 1937, Mr. S. V. Medling, Assistant Attorney General, rendered an opinion in answer to a question raised by Mr. W. P. Wilkerson, then Prosecuting Attorney of Scott County, Missouri. It was to the effect that the County Court had a right to hire and to pay out of the School Fund Money, a salary to someone they appointed to procure insurance and collect on delinquent school fund loans. As you know, this whole set up has been greatly changed. However, our County Clerk has for about ten years, been receiving the sum of \$40.00 per month for this purpose. The County Court is willing to continue to pay this amount; however they would like to have an opinion from your office as to the legality of such payments.

"In view of the above, I would rather have your office give the opinion, without any expression from me."

Section 10376 of Senate Bill No. 162 of the 63rd General Assembly provides 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; PROVIDED, that all interest accruing from such reinvestment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other money lawfully coming into said fund, shall hereafter be collected and distributed annually to the schools of the county as hereinafter provided in this article.

Section 10383 of Senate Bill No. 162 of the 63rd General Assembly provides as follows:

"On and after the effective date of this act, all real estate loans and investments now belonging to the capital of the school fund of any township, 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 capital of township funds, 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; Provided, that all interest accruing from such reinvestment of the capital of township school funds and all other moneys lawfully coming into said funds, shall hereafter be collected and distributed annually for the use of schools in any townships or parts of townships in the county as hereinafter provided in this article."

Both Section 10376 and Section 10383, quoted above, became effective November 26, 1945. Under the provisions of these sections it is clearly the duty of the county court to invest all moneys received from real estate loans in the securities specified in such sections, and the county court obviously has no power to pay the county clerk or any other agent for anything such agent may do in regard to the investment of such moneys in the securities listed.

Section 10384B, Laws of Missouri, 1943, page 880, provided that when a school fund loan on real property was made after the effective date of such section, which was November 22, 1943, the borrower should, before such loan was made and at all times during the term of the loan (which loan could not exceed five years under the provisions of Section 10384, Laws of Missouri, 1943, page 880), insure the buildings on the real estate on which the loan was made, and Section 10384B further provided that the county court should require that such insurance be maintained by the borrower. This is a duty placed directly on the county court.

Since the county court has the duty of seeing that the insurance is maintained, the county court is not authorized to procure insurance on such buildings, and since this is true, the county court cannot pay an agent for procuring insurance on such buildings.

The duty of the county court in seeing that the borrower maintains insurance on such buildings applies also to loans made before November 22, 1943, which loans matured between November 22, 1943, and November 26, 1945, since Section 10384B applies to such loans if they have been renewed, a renewal, in effect, being a new loan.

Loans made before November 22, 1943, which have not yet matured, were made under the provisions of Section 10384, R. S. Mo. 1939, which section was repealed by Senate Bill No. 162, effective November 26, 1945, which provided that when money from the county school fund was loaned, such loan had to be secured by a mortgage on real estate in the county of a value double the amount of the loan, with a bond, and, if deemed necessary, the county court could require personal security on such bond, and provided further that a person accepted as security should own property in an amount equal to that loaned, in addition to all his debts, and that such property must be free from execution, and provided further that the bond should be to the county, and that upon failure of the principal of the bond to give additional security when lawfully required, as provided in Section 10386, R. S. Mo. 1939, which was repealed in 1943, the principal and interest should become due forthwith. This duty was placed on the county court to provide ample security for the repayment of the loan.

The provision that additional security could be required, and if not furnished, that the principal and interest would be forth-

with due and payable, gives the county court the right to require ample security for the loan.

Although the county court was not required to see that the borrower procure and maintain insurance on buildings on real estate on which county school funds were loaned, the county court could have required such a provision be written in the mortgage on the property given by the borrower.

Since the statutes placed on the county court the duty of seeing that ample security was provided for the loan, and since the county court may require additional security if deemed necessary, no authority exists for the county court to procure insurance on buildings on real property on which school funds were loaned prior to November 22, 1943, which loans have not yet matured, and, therefore, no authority exists for the county court to pay an agent for procuring insurance.

Section 10385, Laws of Missouri, 1943, page 880, which section applies to loans on real property made from county school funds after November 22, 1943, provides as follows:

"Every mortgage taken under the provisions of this chapter shall be in the ordinary form of a conveyance in fee, shall recite the bond, and shall contain a condition that if default shall be made in payment of principal or interest or any part thereof, at the time when they shall severally become due and payable, according to the tenor and effect of the bond recited, and shall contain the further condition that if the borrower fail at any time during the existence of the loan to keep the buildings, if any, on the real estate insured against loss by fire and windstorm, with loss payable or mortgage clause attached to policy in favor of the county, that the sheriff of the county may, upon giving twenty days' notice of the time, place and property to be sold, by publication in some newspaper published in the county, if there be one published, and if not, by at least six written or printed handbills, put up in different public places in the county, without suit on the mortgage, proceed to sell the mortgaged premises or any part thereof, to satisfy the principal and interest, and make an absolute conveyance thereof, in fee, to the purchaser, which shall be as effectual to all intents and purposes as if such sale and conveyance were made by virtue of a judgment of a court of

competent jurisdiction foreclosing the mortgage. In all cases of loan of school funds in the various counties, the expense of drawing and preparing securities therefor, and of acknowledging and recording mortgages, including the fees of all officers for the filing, certifying or recording such mortgages, and other securities, shall be paid by the borrower respectively."

Section 10385, R. S. Mo. 1939, which section applied to loans on real property made from county school funds prior to November 22, 1943, provides as follows:

"Every mortgage taken under the provisions of this chapter shall be in the ordinary form of a conveyance in fee, shall recite the bond, and shall contain a condition that if default shall be made in payment of principal or interest, or any part thereof, at the time when they shall severally become due and payable, according to the tenor and effect of the bond recited, the sheriff of the county may, upon giving twenty days' notice of the time and place of sale, by publication in some newspaper published in the county, if there be one published, and if not, by at least six written or printed handbills, put up in different public places in the county, without suit on the mortgage, proceed and sell the mortgaged premises, or any part thereof, to satisfy the principal and interest, and make an absolute conveyance thereof, in fee, to the purchaser, which shall be as effectual to all intents and purposes as if such sale and conveyance were made by virtue of a judgment of a court of competent jurisdiction foreclosing the mortgage. In all cases of loan of school funds in the various counties, the expense of drawing and preparing securities therefor, and of acknowledging and recording mortgages, including the fees of all officers for the filing, certifying or recording such mortgages and other securities, shall be paid by the borrowers respectively."

From the provisions of these two sections, it is clear that upon default in the payment of principal or interest on loans

made on real estate from county school funds, the mortgage can be foreclosed. Since the mortgage can be foreclosed upon non-payment of the principal or interest, a method of enforcing payment has been provided by law, and the county court has no power to pay an agent to collect such loans.

CONCLUSION

It is the opinion of this department that a county court is not authorized to pay the county clerk or any other agent for procuring insurance on buildings on real property on which loans from county school funds are to be made, nor to pay the county clerk or any other agent to collect county school fund loans.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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