

SCHOOL FUNDS:) May not be invested in time deposits even
COUNTY SCHOOL FUNDS:) though bank pledges United States government
) bonds to guarantee deposits.

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Honorable Curt M. Vogel
Prosecuting Attorney
Perry County
Perryville, Missouri

Dear Sir:

This is in reply to your letter of February 24, 1947, requesting an opinion from this department, which reads in part as follows:

"The Constitution of 1945, Section 7 of Article IX, and Section 10376 of the Statute reads in part, quote,

" 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 (1) in registered bonds of the United States, (2) or in bonds of the state or in approved bonds of any city or school district thereof, (3) 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 third method of investing these funds, marked for convenience "3" has raised this question for the County Court: Is it permissible, under this clause, for the county to invest school funds in time deposits in banks, if these time deposits are guaranteed by the bank by depositing under an escrow agreement sufficient United States Government bonds as a pledge against such a time deposit?

"We have encountered difficulties in trying to invest this school fund money which,

roughly, amounts to \$55,000, and we are trying to work out a suitable plan of investment without tying up the money for too long a period."

Your attention is directed to the following sections which provide that the capital of the county and township school funds shall be liquidated and reinvested in certain securities and preserved as a county school fund.

Section 7, Article IX of the 1945 Constitution of Missouri, is, 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 secretly preserved as a county school fund. * * *"

Section 10376, Mo. R.S.A., which implements the above constitutional provision as to the county school fund, 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, Mo. R.S.A., also implementing the above constitutional provision, contains substantially the same provisions, but with respect to the township school fund, and is in part 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; * * *"

From an examination of the above provisions it will be found that after liquidation the county school fund may only be invested in certain authorized securities and that the power of the county court to invest this fund is limited by the above provisions. The question now before us is whether or not a time deposit guaranteed by the bank by depositing under an escrow agreement sufficient United States government bonds as a pledge to guarantee said time deposit, is an authorized security so as to come within the above constitutional and statutory provisions.

While we admit that time deposits may be classified as securities, we do not believe such a plan of investment satisfies the requirement that the security must be fully guaranteed by the United States. The above provisions are unambiguous and the words should be taken in their plain and ordinary meaning, as was held in *State ex rel. v. Wilder*, 206 Mo. 541, 1. c. 549:

"* * * It is fundamental and one of the cardinal rules in the construction of statutes that the true intent and meaning of the lawmaking authority, as expressed in the language employed, should, if possible, be ascertained and declared. On the other hand, it is equally well settled that words and phrases shall be taken in their plain or ordinary and usual sense, and that it is incumbent upon the courts to construe a statute as written, without regard to the results of the construction, or the wisdom of the law as thus constructed. There is no ambiguity in the terms used in section 9701, and they are susceptible of but one construction and that is, that by the proviso it was not intended to embrace circuits in cities of this State containing over 300,000 inhabitants or circuits consisting of one county only; therefore those circuits were left without the pale of the provisions which authorize the payment of expenses of the judges of those circuits, and there is no law in existence now which would authorize the payment of such expenses."

The phrase "in bonds or other securities the payment of which is fully guaranteed by the United States," clearly means that such securities must actually be recognized and guaranteed by the United States. Such is not the case with respect to the proposed plan of investment because the United States would have no control over or knowledge of such an arrangement. To hold otherwise would amount to a strained construction of this provision, which undoubtedly refers only to such securities as bonds of the Reconstruction Finance Corporation, the Federal Home Loan Banks, the Home Owners Loan Corporation, the Federal Farm Mortgage Corporation and those issued under the Federal Housing Act.

The Constitution and statutes by setting up a plan of investment for the county school funds excluded the use of any other plan. These provisions must be construed strictly. The rule is set out in *Chilton v. Drainage Dist. No. 8 of Pemiscot County*, 63 S. W. (2d) 421, at pages 422-423:

"* * * It is a well-recognized rule of construction as to statutes that ordinarily,

where a statute limits a thing to be done in a particular form, it includes in itself a negative, namely, that such thing shall not be done in any other manner. State ex rel. Barlow v. Holtcamp, 322 Mo. 258, 14 S. W. (2d) 646; State ex inf. Conkling v. Sweaney, 270 Mo. 685, 195 S. W. 714."

And also in the case of Lancaster v. County of Atchison, 180 S. W. (2d) 706, at 709:

"* * * Thus, by the express words of the statute, the County is told from what funds the costs of maintaining, repairing and operating the toll bridge are to be paid.

"That fund is from the tolls collected for using the bridge. In this instance, the County was directed in express words from what fund the operation and maintenance expenses are to be paid; therefore, they cannot be paid from any other. Where the statute (Section 8548) 'limits the doing of a particular thing in a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done.' Keane v. Strodtman, 323 Mo. 161, 18 S.W. 2d 896, 898. See, also, Dougherty v. Excelsior Springs, 110 Mo. App. 623, 85 S. W. 112; Taylor v. Dimmitt, 326 Mo. 330, 78 S. W. 2d 841, 98 A. L. R. 995. In other words, there can never be an implied power given a county or other public corporation when there is an express power."

It necessarily follows then that the county court, which is charged with the management of the county school fund, is not authorized to invest said fund in the manner proposed as it is limited in its authority by the Constitution and statutes. This is set out in Lancaster v. County of Atchison, supra, l. c. 708:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 S. W. 2d 962, loc. cit. 964."

And further, if there is any reasonable doubt as to the authority of the county court to act in a certain manner for the county, that doubt will be resolved against the county and the authority denied (Lancaster v. County of Atchison, supra). In the present case it is quite clear that there is no statutory or constitutional authority which would allow the county school fund to be invested in the manner which has been proposed.

We are enclosing herewith a copy of our opinion rendered to the Honorable Emory L. Melton, Prosecuting Attorney of Barry County, under date of February 7, 1947, relative to the liquidation of the county school fund invested in United States government bonds. This opinion may be of interest to you since you indicate in your letter that the county desires to invest said fund so that it will not be tied up for too long a period.

Conclusion

It is, therefore, the opinion of this department that the county school fund may not be invested under the provisions of Section 7, Article IX of the 1945 Constitution and Sections 10376 and 10383 of the Missouri Revised Statutes Annotated, by placing said fund on time deposit in a bank which deposits under an escrow agreement sufficient United States government bonds as a pledge to guarantee said deposit.

Respectfully submitted,

APPROVED:

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Enc.