

SCHOOLS:
COUNTIES:

(1) When real estate belonging to the county and township school funds is liquidated pursuant to Article

IX, Section 7 of the Constitution the oil, gas and mineral rights in such real estate must also be liquidated and may not be reserved to the county. (2) The proceeds derived from the sale of such real estate together with those derived from the sale of the oil, gas and mineral rights shall be credited to the county school fund.

OPINION NO. 121

May 26, 1970

Honorable Raymond Eckles
Prosecuting Attorney
Nodaway County Court House
Maryville, Missouri 64468



Dear Mr. Eckles:

This is in response to your request for an official opinion on the question as to which fund in Nodaway County should be credited with the money received for real estate which was sold because it was situated in another county.

Section 49.285(1), RSMo Supp. 1967, is as follows:

"1. It shall be unlawful for any county of the third or fourth class to own real estate situated in any other county of this state other than a county which adjoins it after five years from October 13, 1963, or after five years from the date of acquisition of the real estate, whichever date last occurs. If any county subject to these provisions fails to dispose of such real estate within that time, the sheriff of the county in which the land is located shall take possession of the real estate and sell it at public auction from the place where and at the hour when partition sales are normally conducted after giving notice of the sale in the manner prescribed for partition sales both in the county where the land is located and in the county owning the real estate. Proceeds from the sale shall first be applied to paying the costs of notices herein prescribed, then to a sheriff's sale fee not to exceed one hundred dollars and approved by the circuit court of the county wherein the real estate is located, then to

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the county owning the real estate. However, all oil, gas and mineral rights shall be reserved to the county when said real estate is sold. The county may, however, lease said rights to third parties and the oil, gas and minerals sold under said lease shall revert to the general revenue fund of the county."

The question presented is whether the sale of such land may be made by the county subject to the provisions of Section 49.285 (1) in view of Article IX, Section 7 of the Constitution which is as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as herein-after 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. 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. All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law."

We must therefore inquire into the nature of the right of Nodaway County to sell the land in question and the effect of the sale of such land upon that right.

According to the information submitted, the land in question has been appropriated by the United States to the State of Missouri

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for the use of schools. The origin of the school fund in Missouri is described in *State v. Bonner*, 5 Mo.App. 13, 18 (1877) as follows:

"The school-fund of this State had its origin in the act of Congress of March 6, 1820, authorizing the people of the Missouri Territory to form a constitution. By that act it was provided that section 16 of every township shall be granted to the State, for the use of the inhabitants of such township, for the use of schools. An act of the General Assembly of January 31, 1831, provided for the sale of these lands to create a fund for the use of schools. . . ."

In *Maupin v. Parker*, 3 Mo. 310 (1834), our Supreme Court held that these grants were absolute conveyances and that the General Assembly had power to provide for the sale of such lands for the use of schools. This decision was affirmed in *Payne v. St. Louis County*, 8 Mo. 473 (1844). In that case the court held that: ". . . It is beyond controversy, that the United States have no interest whatever in these lands," The court also pointed out, *loc. cit.* 479:

". . . The Legislature is restricted only by the Constitution of the State. This prevents and prohibits a diversion of the fund from the purpose to which it has been dedicated. The Legislature is required to apply the funds 'arising from these lands,' in strict conformity to the object of the grant. . . ."

The court also indicated that the object of the grant was the advancement of education and the provision of a fund for that purpose.

Article IX, Section 7 of the Constitution of Missouri provides for the liquidation of all real estate belonging to the various county and township school funds and requires that the proceeds derived therefrom be ". . . sacredly preserved as a county school fund. . . ." The legislature may be presumed to have had the constitutional restrictions in mind when it enacted Section 49.285(1) in 1963. *State ex rel. Kessler v. Hackmann*, 264 S.W. 366 (Mo. 1924). Certainly, the legislature must be deemed to have acted with integrity and with a desire to keep within the Constitution in its action. Therefore, when the legislature enacted Section 49.285(1) and made provisions for the reservation of all oil, gas and mineral rights so that when such rights are sold the proceeds arising therefrom ". . . shall revert to the general revenue fund of the county."

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the legislature must have had in mind real estate and investments different from the real estate and investments described in Article IX, Section 7 of the Constitution as belonging to the various county and township school funds. That being true the provisions of Article IX, Section 7 of the Constitution rather than the provisions of Section 49.285(1) applies to liquidation of real estate and investments belonging to the county and township school funds. Accordingly, to comply with this constitutional provision the oil, gas and mineral rights as well as the land itself must be liquidated.

Article IX, Section 7 of the Constitution was considered by the court in State ex rel. School Dist. of Fulton v. Davis, 236 S.W.2d 301 (Mo. en banc 1951). In that case the court stated on page 304:

"More to the point, however is the wording of the constitutional provision itself. After directing the liquidation of all township and county school funds and prescribing the method of reinvestment thereof, it further provides that they shall be sacredly preserved as a county school fund. There can be no doubt of the meaning of that provision. Township and county school funds are thereby merged into one fund, to-wit: a county school fund. So, therefore, when the investments belonging to the county and township school funds of Callaway County were liquidated, in accordance with the constitutional mandate, they became a county school fund. It is unthinkable that when the electors elected to have this county school fund distributed annually, it would again amoeba-like divide into township funds and a county fund so as to require township funds to be distributed on a township basis and the county fund on a county basis. The further wording of the provision states specifically otherwise. It says: 'All interest accruing from investment of the county school fund * * * shall be distributed annually to the schools of the several counties * * *.' Thus, after liquidation of the formerly separate and distinct county school fund and township school funds, both the proceeds of principal and the accruing interest become one fund, namely: the county school fund."

It appears therefore that under Article IX, Section 7 of the Constitution, township and county school funds are merged into one

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fund known as the county school fund, and that the liquidation proceeds of investments of formerly separate and distinct township and county school funds merged into one county school fund.

CONCLUSION

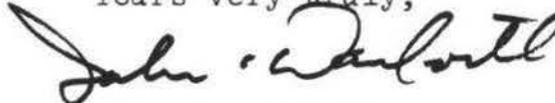
It is the opinion of this office that:

(1) When real estate belonging to the county and township school funds is liquidated pursuant to Article IX, Section 7 of the Constitution the oil, gas and mineral rights in such real estate must also be liquidated and may not be reserved to the county, and

(2) The proceeds derived from the sale of such real estate together with those derived from the sale of the oil, gas and mineral rights shall be credited to the county school fund.

The foregoing opinion, which I hereby approve, was prepared by my Assistant L. J. Gardner.

Yours very truly,



JOHN C. DANFORTH
Attorney General