

COUNTIES: Surplus funds received by the county  
COUNTY COURT: collector from the sale of property  
SCHOOL FUNDS: for taxes are to be deposited with  
COUNTY TREASURER: the county treasurer as provided  
for under Section 140.230, RSMo  
1969, and invested as provided for under Article IX, Section 7,  
Constitution of Missouri, 1945 and Section 166.131, RSMo 1969.

OPINION NO. 435

December 20, 1971



Honorable James L. Paul  
Prosecuting Attorney  
McDonald County Courthouse  
Pineville, Missouri 64856

Dear Mr. Paul:

This is in response to your request for an opinion from this office in part as follows:

"Is the County Treasurer of a 3rd Class County authorized to invest in time certificates of deposit with a bank, monies received from the Collector at tax sales, which are in excess of the amount of taxes due on said land and are required by law to be held by the Treasurer for 20 years."

You further state that:

"The interpretation of Section 140.230 of the Revised Statutes of the State of Missouri, paragraph (2) has been requested by the County Treasurer as to the possibility of increasing the amount of money that would fall due to either the county or the person claiming."

Section 140.230, RSMo 1969, to which you refer, provides in part that when real estate has been sold for taxes or other debt by a sheriff or collector of any county within the State of Missouri, and the same sells for a greater amount than the debt or taxes and all costs in the case, and the owner or owners, agent or agents cannot be found, it shall be the duty of the sheriff or collector of the county to pay the surplus money into the county treasury. It further provides:

"2. And said treasurer shall place such moneys to the credit of the school fund of the county,

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to be held in trust for the term of twenty years for the owner or owners or their legal representatives. And at the end of twenty years, if such fund shall not be called for, then it shall become a permanent school fund of the county."

We assume from the information you have given us, that twenty years have not elapsed since this money was paid into the county treasury.

Article IX, Section 7, Constitution of Missouri, 1945, provides:

"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."

This constitutional provision has been implemented by Section 166.131, RSMo 1969, which provides as follows:

"The county court in each county shall administer the county school fund of the county. In each county wherein the annual distribution of the liquidated capital of the county school

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fund has not been ordered by the voters pursuant to sections 166.151 to 166.171, the proceeds of the fund shall be invested by the county court 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. Annually, on or before August thirty-first, in each county of the state all interest accruing from the investment of the capital of the county school fund, if any, 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 the fund, shall be collected and distributed to the school districts of the county by the county clerk upon the basis of the last enumeration on file in his office. He shall immediately after making the apportionments enter them in a book to be kept for that purpose, and shall furnish each district clerk a copy of the apportionment. The county treasurer shall credit each common school district in the county with the amount it is entitled to receive and shall pay over to the treasurer of the school board of every other district in the county the amount due each respective district."

We are enclosing herewith an opinion issued on April 9, 1947, by this office to Honorable Curt M. Vogel, Prosecuting Attorney of Perry County, Perryville, Missouri, in which it was ruled that funds belonging to the public school fund could not be invested in time deposits but have to be invested as provided in Article IX, Section 7, Constitution of Missouri and Section 166.131, RSMo.

It is the opinion of this office that surplus funds received by the county collector from the sale of property for taxes are to be deposited with the county treasurer and become part of the county school fund to be held in trust for twenty years subject to be paid to the owner together with all interest accruing thereon from investment during such period and are to be invested as provided for under Article IX, Section 7, Constitution of Missouri and Section 166.131, RSMo, 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.

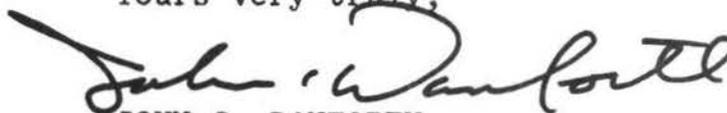
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CONCLUSION

It is the opinion of this office that surplus funds received by the county collector from the sale of property for taxes are to be deposited with the county treasurer as provided for under Section 140.230, RSMo 1969, and invested as provided for under Article IX, Section 7, Constitution of Missouri, 1945 and Section 166.131, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the printed name and title.

JOHN C. DANFORTH  
Attorney General

Enclosure: Op. No. 92  
4-9-47, Vogel