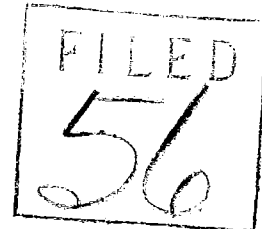


COURT: Cannot loan surplus money from tax sales, as
FUNDS: school funds until 20 years elapse from date
of deposit in county treasury.

January 28, 1941

Miss Georgia Malony
Oregon County Treasurer
Alton, Missouri



Dear Madam:

This will acknowledge receipt of your letter of November 30, 1940, in which you request our opinion on the following question:

May the County Court loan, as school funds, the money derived from unclaimed surpluses resulting from the sale of real estate for taxes, that is placed to the credit of the school fund of the county?

Section 9959, Laws 1933, p. 428, is as follows:

"When real estate has been sold for taxes or other debt by the 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, when such sale has been or may hereafter be made, to make a written statement describing each parcel or tract of land sold by him for a greater amount than the debt or taxes and all costs in the case, and for which no owner or owners, agent or agents can be found, together with the amount of surplus money in each case, which statement shall be subscribed and sworn to by the sheriff or collector making the same before some officer competent to administer oaths within this state, and then presented to the county court of the county where such sale has been or may hereafter be made; and on the approval of the statement by the court, the sheriff or collector

making the same shall pay the said surplus money into the county treasury, take the receipt in duplicate of said treasurer for said over-plus of money and retain one of the said duplicate receipts himself and file the other with the county court, and thereupon the court shall charge said treasurer with said amount. And said treasurer shall place such moneys to the credit of the school fund of the county, 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. County courts shall compel owners or agents to make satisfactory proof of their claims before receiving their money: Provided, that no county shall pay interest to the claimant of any such fund."

Section 9243, R. S. Mo. 1929, provides, in part, as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect, preserve and securely invest, at the highest rate of interest that can be obtained, not exceeding eight nor less than four per cent. per annum, on unencumbered real estate security, worth at all times at least double the sum loaned, and may, in its discretion, require personal security in addition thereto; the proceeds of all moneys, stocks, bonds and other property belonging to the county school fund; * * * "

We think a proper understanding of the provisions of these sections completely answers your question.

Under Section 9959, when the sheriff or collector sells land for taxes and it brings more than the amount due, which surplus is unclaimed, he must make a written statement to that effect, describing the lands sold and the amount of surplus money on hand from that sale. This statement must be presented to the County Court for approval, and when approved the surplus money is paid into

January 28, 1941.

the County Treasury. The statute then directs the treasurer to "place such moneys to the credit of the school fund of the county."

Section 9243 makes it the duty of the County Court to collect, preserve and invest all property "belonging to the county school fund." This statute further enumerates other items which go into, and make up said fund and provides that they "shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund."

Thus, it is to be seen that the only funds which the county court can invest under said Section 9243, are those "belonging to the county school fund," while under Section 9959, the money resulting from surpluses on tax sales is only "placed to the credit of the county school fund."

We do not think money placed to the credit of the school funds belongs to the school fund. The reason for this is found in other provisions of Section 9959, where it is provided that surplus money from tax sales deposited in the county treasury is "to be held in trust for the term of twenty years for the owner or owners or their legal representatives." This provision certainly does not indicate that said funds belong to the school fund, but to the contrary indicates that for this twenty year period the money is that of the true owner and is merely being held in trust by the county for him.

The next sentence of said section makes it doubly clear that, that is the meaning of the statute, because it provides that if "at the end of twenty years, * * * such fund shall not be called for, then it shall become a permanent school fund of the county."

CONCLUSION

It, therefore, is our opinion that a county court cannot loan, as school funds, the money derived from unclaimed surpluses resulting from the sale of real estate, that has been placed to the credit of the county school fund under Section 9959, Laws 1933, p. 428, until twenty years have elapsed from the date it was deposited in the county treasury.

Respectfully submitted,

APPROVED:

L. WRENCE L. BRADLEY
Assistant Attorney-General

COVELL R. HEWITT
(Acting) Attorney-General
LLB/mc

11159-1984