

COUNTY FUNDS: Minimum rate of interest. Cannot be invested in bonds.
COUNTY TREASURER; Term of Office--Old Treasurer holds over until new
treasurer has qualified--amount of bond

12189-12133 RSM-1929

January 26, 1933



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Dear Sir:

Your communication of January 14th, has been referred to me and the request for an opinion upon the following items:

- First: "Lincoln County's depository bank failed. The County Court advertised for bids for the money and has received no bid; in fact, all the County Bankers have appeared before the Court and stated that they do not wish to carry the account at the statutory interest rate. Consequently, the Court is "at its rope's end" with regard to the statutory designation of a depository. I wish your opinion as to the right of the County Court with reference to the funds of the County; that is, whether or not it can deposit the funds in a bank without interest, or for a lesser rate than the statute requires."
- Second: "The newly elected County Treasurer is unable to give bond and qualify, due to the lack of a county depository; the old treasurer, of course, continues to act until the new treasurer is elected and qualified. I wish your opinion as to whether or not the County Court has the right under the Statute to declare the office of Treasurer vacant and thus bring about the appointment of a new Treasurer, or, does the old Treasurer hold over until the new treasurer qualifies, regardless of the length of time involved."
- Third: "Has the County Court authority to invest the county funds in Government bonds."
- Fourth: "What bond shall be required of the County Treasurer."

In answer to this first proposition, we believe that Section 12189 R.S. Missouri 1929 provides a minimum rate of interest of one and one-half per centum, per annum, and is controlling upon the County Courts. The County Court is without authority to accept less than this rate of interest.

The deposit of public funds without the bond prescribed by statute makes the fund so deposited a trust fund for which a preference is allowed against the bank accepting the said funds. Consolidated School District v. Bank, 22 S.W.(2d) 781.

In answer to your second proposition, the County Court has not authority to declare the office of Treasurer vacant since the previous County Treasurer holds office until his successor is elected and qualified. Section 12130, R.S. Mo. 1929. Under this Section and Section 5, Article XIV, Missouri Constitution the old Treasurer holds over until the newly elected Treasurer qualifies by giving a bond as is provided for. Section 12133, R.S. Mo. 1929.

In answer to your third question we hold that the County Court has no authority to invest the County money in any security whatever unless specifically authorized by statute to do so. The only authority lodged in the County Court to invest any money is found in Sections 9250, 9251, 9252 and applies only to money belonging to the capital of the school fund. The failure of the County Court to select a depository makes the County Treasurer and his bondsmen liable for the County funds. Section 12198, and the acceptance of a bond by the County Court which does not comply with the statutes, does not change this rule. State v. Thompson, 22 S.W.(2d) 196. Bragg City v. Road District, 20 S.W.(2d) 22.

As to what is a sufficient compliance with the statute with reference to a depository bond, see Boone County v. Cantley 51, S.W. (2d) 56, l.c. 58, wherein the Court indicated that any non-compliance with the statute in order to be fatal must prejudicially affect some right involved.

In answer to your fourth proposition, the County Treasurer after his election shall enter into bond to the County in a sum not less than 20,000 to be fixed by the County Court. Section 12133, R.S. Mo. 1929. Under this section, the County Court should determine as a matter of fact how much bond is necessary to adequately protect the County. It is not necessary for the County Court, in fixing the amount of the bond, to attempt to fix it at an amount sufficient to cover the entire four year term of his office, since the County Court has the authority every six months to require the County Treasurer to give a new bond or additional security. Section 12134, R.S. Mo. 1929.

Yours very truly,

Approved:

FRANKLIN E. REAGAN
Assistant Attorney General

ROY McKITTRICK
Attorney General