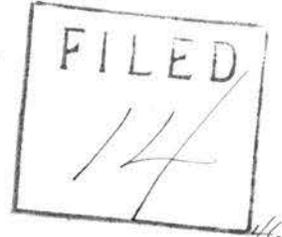


CITIES OF THIRD CLASS:

Upon failure of city to find or select a city depository, city Treasurer should be found who could give bond for the protection of city funds.

Sec 6794-97 RS Mo 1929

September 23, 1933.



Mr. Joe Carr,
Commissioner of Finance,
Maplewood, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"As Commissioner of Finance of the City of Maplewood, I would appreciate some advice from you as to how to handle the situation that has arisen in connection with the selection of a city depository and the handling of the city's funds.

The depository contract previously entered into expires on October 1st, 1933. Apparently in violation of Section 6793 of the Revised Statutes of Missouri, 1929.

Section 6794 provides for a bond with not less than three solvent sureties owning unencumbered real estate in the state of as great a value as the amount of the bond. The penalty of the bond to be double the revenues of the city in any one year. It looks like this section cannot be complied with.

About six weeks ago the council appointed a Treasurer, so as to comply with Sections 6796 and 6798 regarding the signing of checks, etc. However, we cannot find any one willing to issue a bond covering the Treasurer. The bonding companies will not issue a depository bond because of the banking situation. Something must be done to protect the city's funds. The Board of Education is keeping it's funds in a safety deposit box. I understand that St. Louis County is doing the same.

What can Maplewood do to comply with the law, safeguard it's funds and qualify it's Treasurer. An opinion will be greatly appreciated."

You state that the city depository contract expires on October 1, 1933, and that it is not possible to comply with Section 6794 in regard to the bond of the depository; that you cannot find anyone who will furnish a bond to the city Treasurer; that bonding companies will not issue a depository bond because of the banking situation. You ask us to solve the problem as to what the city shall do.

Section 6744, R. S. Mo. 1929, provides, among other things, as follows:

"* * *Every officer of the corporation, when required by law or ordinance, shall, within fifteen days after his election or appointment, and before entering upon the discharge of the duties of his office, give bond to the city in such sum and with such sureties as shall be designated by ordinance, conditioned for the faithful performance of his duty, and that he will pay over all moneys belonging to the city, as provided by law, that may come into his hands. If any person elected or appointed to any office shall fail to take and subscribe such oath or affirmation, or to give bond as herein required, his office shall be deemed vacant. For any breach of condition of any such bond, suit may be instituted thereon by the city, or by any person in the name of the city for the use of such person."

Under the provisions of the foregoing section, your Treasurer is not^a qualified officer of the city until such time as he shall furnish the city a bond "in such sum and with such sureties as shall be designated by ordinance." We do not know in what amount your ordinance requires that the Treasurer give bond. That is a matter of public policy to be decided by the council in the passing of the ordinance. If, by reason of the financial condition in your community, it is not possible to obtain a depository for these funds with bond as required by law, then the source of protection that you have is the City Treasurer and the bond guaranteeing the funds in his hands. We can only suggest that a person should be made City Treasurer of your city who is in a position to give a bond ample in size and with proper security as would protect the city funds.

Section 6797, R. S. Mo. 1929, deals with the failure to select a depository. The Section also provides:

"* * *The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this article shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part, or from responsibility for the funds of the city at any time when, for any reason, there shall be no city depository, or until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him."

In view of the foregoing section the city treasurer in the absence of a city depository is responsible for the city's funds. For that reason the city treasurer should be properly bonded in order to protect the city's funds until such time as a proper city depository may be selected. The city Treasurer

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being responsible to the city for it's funds, it is for him to decide whether or not he shall deposit the city funds in some bank without bond from them, or whether or not he shall preserve the city's funds in some other manner.

We, of course, cannot under-take to advise where the city treasurer shall deposit his money or where it shall be placed for safe keeping. Common prudence, however, would indicate that if the city treasurer deposits money for which he would be liable upon his bond in a banking institution, that he should require from such bank a bond which would protect him personally.

It is, therefore, the opinion of this Department, in view of the unusual situation confronting you, that no treasurer should be permitted to hold office in your city unless he is able to give the bond required under Section 6744, R. S. Mo. 1929, for the protection of city funds. Such treasurer, until a depository is found and selected, should protect himself if he deposits city funds in some bank. We do not understand the law to require the city to select a depository which is located in Maplewood. Certainly in St. Louis there must be institutions which would be agreeable to become a depository for your city under the terms of the statute. As a practical matter, you may find the solution of your problem in going outside of the city of Maplewood for a depository.

We hope that the suggestions here may be of some help, but in the solution of your difficulty, it occurs to us that it is not so much a matter of law as it is a matter of business to be worked out by your officials.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S