

COUNTY DEPOSITARIES: County unable to receive bids in county or adjoining counties may at subsequent term select such depository.

12196-98 R S Mo 1933

May 16, 1933



Hon. Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

This is to acknowledge your letter of May 3, 1933, which is as follows:

"We have the following situation in regard to the deposit of county funds of this county by the county court.

There are three banks in this county. One of them, The Bank of Fredericktown, Fredericktown Missouri., is now operating under a restriction of only 5% withdrawal of deposits every six months. The Bank of Marquand, of Marquand, Mo., is not operating under restriction but does not want the county deposit. The Security Bank of Fredericktown, Fredericktown, Mo., has been the county depository for approximately twenty years. (Section 12186 R. S. of Mo. 1929, provide that the depository be selected by the county court on the first day of the May term of each odd year. Then in Section 12187 the law requires a bond be made by the depository bank within ten days after the selection made by the county court.) The County Court of this county on the first day of the May Term 1933, did receive one bid for the depository, that bid was from the Security Bank of Fredericktown and the rate offered for the deposit was one half of one per cent but they will not make a bond as is required under section 12187 because of the unsettled banking conditions. The county court will not receive any additional funds until after August 1933 and we find it is impossible to get a bond from any depository of any adjoining county. Would the county court of this (Madison) county be permitted to wait until August of 1933 before completing their

selection of a county depository so that the banking situation would be more settled and a bond be secured?

You are no doubt aware that abnormal banking conditions prevail in every county at the present and the county court believes that if allowed to defer this selection until August banking affairs will be more settled and the proper arrangements may be made. Please give me your opinion on this matter immediately."

You state that it is impossible at this time for your county court to select a depository of county funds due to the refusal of the banks of Madison County or adjoining counties thereto, to execute a bond as required by statute.

You wish to know if the county court may wait until August to make the selection of a depository.

Section 12184 R. S. Mo. 1929 reads in part as follows:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals,"

It will thus be seen the above statute makes it the plain and mandatory duty of the county court to receive proposals as therein set out, and no exception is provided.-

Section 12185 R. S. Mo. 1929, provides a procedure for bidders for the county funds.

Section 12187 R. S. Mo. 1929, provides in part as follows:

"Within ten days after the selection of depositaries, it shall be the duty of each successful bidder to execute a bond payable to the county, to be approved by the county court and filed in the office of the clerk thereof, " " " " "

Section 12189 R. S. Mo. 1929, provides if no proposals are received then the county court has the right to go to adjoining

counties for same, and such depositaries, if accepted, must comply with the requirements of the statutes.

The above statutes provide the manner county funds are to be dealt with and they are mandatory and must be complied with. The county court must ask for proposals, and if none are received, then they may go to adjoining counties, and upon the failure to receive any proposals there, then the county court has done all in its power and has performed its duty under the statute and it may then at any subsequent term as hereinafter provided, select a depositary.

Section 12196 R. S. No. 1929, reads as follows:

"If, for any reason, no selection of a depositary is made at the time fixed by this article, the county court may, at any subsequent term, after twenty days' notice, receive bids and select a depositary or depositaries in the manner herein provided, and the bank or banks so selected shall remain the depositary or depositaries until the next regular term for the selection of a depositary as provided by section 12184 of this article, unless the order selecting it be revoked for the causes specified in this article."

A reading of this statute would seem to cover your difficulty, because no selection of a depositary as you state may be made at this time. However, we call to your attention Section 13198, as to the county treasurer's liability. A portion of same being as follows:

"* * * or from responsibility for the funds of the county, until a depositary shall be selected and the funds deposited therein." * * *

There are other matters that should be set out in this opinion, and we are attaching hereto a copy of a previous opinion rendered by this office, dated February 7, 1933, to Honorable O. H. Kamp,

Hon. Melvin Englehart.

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for your information, as we believe it fully answers pertinent questions that may arise.

It is our opinion from the above and foregoing that it is the duty of the county court to ask for proposals and to select a depository as outlined in the statutes, and if it fails for any reason not within its control, then as provided for in section 13196, said county court may at any subsequent term select such depository. However, section 13196 does not mean that the county court may defer asking for proposals or in selecting a depository as a matter of discretion only, but the failure, if any, to select such depository being due to the inability to have banks meet the requirements of the statutes.

It must be kept in mind that county money must be handled in the manner prescribed by statute and such statutes are mandatory and must be strictly complied with as the county court is not dealing with private money but with the county's funds.

Yours very truly,

JAMES L. HORNOSTEL,
Assistant Attorney General.

APPROVED _____
Attorney General.

JLH:MM
Enc.