

PUBLIC FUNDS OF COUNTY:**County court may require collector to give new bond or additional security; it is the duty of the Prosecuting Attorney, upon request of the county court, to take such legal action as may be necessary for the preservation and protection of public funds of the county.

11318-4885 RS Mo 1929

October 18, 1933.



Mr. H. B. Hord,
Weston, Missouri.

10.23

Dear Sir:

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

"I am writing you as to the school funds of Platte County which are held in a 5% bank at Platte City in the account of the Collector of the said county. This money so held and upon which the school districts depend for operating expense has so been held since March with no endeavor being made to obtain it either from the bank or the Collector's bondsmen.

It is very important that something should be done about this, and so far as anybody can say, it has been a matter of passing the 'buck' and that is the reason that I am writing you think it is your duty to assist the districts in the county when they can not get anything done by those which should attend to it here. It would be greatly appreciated by the districts in this county if you would send in a special attorney for that purpose or better yet, do this yourself.

One matter I want to call your attention to, is that if the bondsmen now who are obligated for this fund that is tied up are not good for the sum involved, wouldn't it be absurd to let this Collector continue on the same which is now proving so worthless.

Please advise me as to the steps necessary to get your office to handle this matter so that the school of the district will not be closed."

Section 9885, R. S. Mo. 1929, dealing with Collector's bonds, provides as follows:

"Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts,

and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any two months of the year preceding his election or appointment, plus ten per cent of said amount: Provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, 1909, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. The official bond required by this section shall be signed by at least five solvent sureties."

Under the foregoing section the security of the bond is to be passed upon by the county court and they are the judges as to whether or not the security is adequate. We are of the opinion that whether or not the security of the bond continues to be sufficient is a matter to be passed upon by the county court, and that whenever by reason of changed conditions the sureties of the bond do not afford adequate protection for the county funds, they may require a new bond to be given. It is said in *State ex rel. v. Lafayette County*, 41 Mo. 1. c. 561:

"There is nothing in the statute that prohibits the county court from requiring the collector at anytime when the protection of the public interest would seem to demand it, to give an additional bond and security. In all cases, however, he would be entitled to a reasonable time to comply with the order of the court."

In answer to your first inquiry, therefore, it is the opinion of this Department that if the sureties on the bond of the collector have ceased to be adequate, that the county court should require additional security for the protection of the county funds.

This Department, under date of September 19, 1933, rendered an opinion to the effect that public moneys deposited in a bank, which afterwards placed a restriction upon the withdrawal of their deposits, could be withdrawn without regard to such restriction. In other words, we held that the restriction placed upon deposits by banks did not apply to public moneys on deposit within said bank at the time the restrictions were made. On the basis of that opinion we believe the county court may require the bank, which is the depository for public funds of the county, to pay out demand deposits of the county upon demand without regard to any restriction placed thereon by the bank.

In answer to your next inquiry we beg to advise you that it is the duty of the Prosecuting Attorney of your county to take

whatever steps that are necessary for the protection or the recovery of the public funds of the county. Section 11318, R. S. Mo. 1929, dealing with Prosecuting Attorneys, provides as follows:

"He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing when demanded, to the county court, or any judge thereof, except in counties in which there may be a county counselor. * * *"

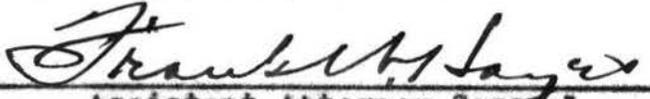
Section 11316, R. S. Mo. 1929, provides as follows:

"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state, or county, * * *."

In view of the foregoing sections, it is the duty of the prosecuting attorney of your county, when requested by the county court, to take such legal action as is necessary to protect the legal funds of the county. It is the duty of the county court to protect and preserve the county funds, and the matter to which you refer is a matter in which the county is directly interested in a financial way, so as to bring it absolutely within the duty of the prosecuting attorney to take such action as the situation requires, when requested by the county court.

This office is swamped with legal matters pertaining to the state's affairs, which the prosecuting attorneys and other officials have no authority to handle. We cannot undertake, in view of such fact, to perform the duties of every prosecuting attorney in the state. If, however, the prosecuting attorney, upon request from the county court, fails to take the necessary action, we should be glad to advise you further in this respect.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.