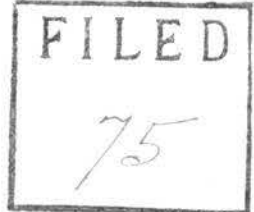


REQUIREMENTS OF BOND FOR TOWNSHIP DEPOSITORY AND
COUNTY DEPOSITORY; ALSO PERSONAL BOND OF TOWNSHIP
TRUSTEE. ✓✓

April 24, 1933



Hon. Virgel L. Rathburn
Prosecuting Attorney of Hodaway County
Maryville, Missouri

Dear Virgel:

I quote from your recent letter requesting an
opinion:

"As a newly elected Township Trustee, I ask that you advise whether or not I and my official bondsmen would have any liability for Township funds that might be lost in bank failure, providing such funds were deposited in a bank not designated by the Township Board. Section 13186 Revised Statutes 1929, states that the Township Trustee, shall deposit all school taxes and Township funds in a bank selected by the Board, and it provides further that if there is no selection made by the Board that the Trustee shall deposit school and Township funds in any County depository within the Township, if there be one and if not then in a County depository most convenient to said Township.

If our Township Board does not select any bank then are the funds which come into my hands and which I might deposit in a County depository protected by the bond of the County depository? Would I be relieved of depository liability regardless of whether or not the bond of the County depository is large enough to cover both County funds and funds of our Township? I understand that wherever the Township Board designates a bank it shall follow the procedure outlined in Section 13187 for County depositories and that I would have no personal liability for safety of funds where this procedure is followed. I am quite desirous of knowing, however, just what the situation would be with respect to my personal liability and the liability of my bondsmen in case the Township does not designate a bank and I deposit my funds in some County depository."

Section 12279, R.S. No. 1939 provides:

"Every person elected or appointed to the office of township trustee and ex officio treasurer, before he enters on the duties of his office, and within ten days after his election or appointment, shall execute and deliver to the township clerk a bond with one or more sureties, to the satisfaction of the township clerk, payable to the township board in double the amount of all the township funds, including school moneys, that may come into his hands; and every such bond, when deposited with the township clerk as aforesaid, shall constitute a lien upon all of the real estate within the county belonging to such trustee and ex officio treasurer at the time of filing thereof, and shall continue to be alien until its conditions, together with all costs and charges which may accrue by reason of any prosecution thereon, shall be satisfied. * * * "

Section 12184, R.S. No. 1939, provides:

"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 from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositories of the funds of said county. * * * Provided, that in counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are herein conferred upon county courts with reference to county funds at the same time and manner, except that township funds shall not be divided, but let as an entirety: Provided, also, that in all cases of the letting of township funds, three notices, posted in three public places by the township clerk, will be a sufficient notice of such letting."

In the statutory provisions for a township trustee's bond, the Legislature did not provide for any exceptions of liability in case of bank failures or any other possible contingencies. Being a liability bond, the Legislature meant that it should be written to cover the trustee's liability in all events. For his failure to comply with the terms of said bond in the

performance of his statutory duties as set out in Article 7, Chapter 86, Revised Statutes of Missouri, 1929, he and his bondsmen are liable. They are liable under an appropriate action for his negligent, careless or fraudulent acts or for his failure to perform his duties according to law.

The provisions of Section 12184 applying to township depositories should be complied with and the duty to comply is mandatory on the township board, for the Legislature said that they shall exercise the same powers and privileges with reference to township funds as county courts do with reference to county funds. That is to say, that they (the board) must select a depository as prescribed by law and in selecting the same they must act in good faith and with due regard to the best interest of the township. The Supreme Court in a similar question so held, in *Denney v. Jefferson County*, 372 Mo. 436.

The personal liability of the township trustee and his sureties shifts when township funds are placed in a duly selected township depository. Then the liability shifts to the depository and its bondsmen under the terms of Section 12187, R.S. Mo., 1929.

Answering your first question, viz. "Would the township trustee and his official bondsmen be personally liable for township funds that might be lost in a bank failure where he places said funds in said bank, said bank not being designated as a township depository?", it is the opinion of this office that the trustee and his bondsmen could best avoid liability in the hypothetical case by keeping township funds in a bonded township depository, selected by the board as provided by law. There is no duty on him to select a township depository but when he assumes to act under the provisions of Section 12188, R.S. Mo., 1929, which provides,

"* * * Provided that in counties under township organization it shall be the duty of the township trustee to deposit all school taxes received by him with the depository selected by the township board of his township as the depository of the township funds; provided, that in default of the selection of the depository by the township board, and during the time when any township shall have no depository of its funds the township trustee shall deposit all school taxes and all township funds received by him in any county depository within said township, if there be one; if not, then in the county depository most convenient to said township, and such county depository shall thereupon pay to the

township the same rate of interest upon such moneys which it shall have contracted to pay the county upon its funds, and the township may recover the same by civil action; * * *

he must not act in a negligent manner in making his choice of depositories. Negligence is always a question for the jury, each case depending on its own peculiar facts. It is impossible to give a more definite answer to your question of his liability in such a case.

Your question: "Are township funds, deposited in the county depository and identified as township funds so deposited, protected by the bond of the county depository?" It is the opinion of this office that unless the terms of the county depository bond be broad enough to include township funds, then township funds deposited in the county depository would be protected only by implication under the county depository bond given under the provisions of Section 12187, R. S. Mo., 1929, it would be best to provide that the county depository bond specifically includes by its terms liability for township funds. A separate township depository bond may be provided and should be provided when the township depository is a different bank from the county depository. The township is one legal entity in contemplation of law. The county is another. Their funds are separately identified and should be separately protected unless it be the intention of the bonding company to protect both funds in one bond, the depository selected as provided by law as a depository for both county and township funds. I believe I have answered your question under the facts given and the law.

Respectfully yours,

Wm. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

Attorney General

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