

September 23, 1933.

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Hon. Leslie D. Rice
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Mr. Rice:

This Department is in receipt of your letter of September 8th, 1933, in which you make further inquiries and request for an opinion relative to the depositing of the county funds of Newton County, which letter is as follows:

"Under date of August 14, 1933, I received an opinion from you which had been asked for by Mr. John W. Franks, County Treasurer of Newton County, Missouri. As you will remember, the situation was as follows:

The two banks in Neosho bid for eight-tenths of the deposit but refused to give a depository bond. You held that the bond of the County Treasurer covered not only the fidelity of the County Treasurer but the funds in the bank.

Upon receipt of that opinion the County Court thereupon re-advertised for bids for eight-tenths of the county deposit. No banking corporation or individual banker in Newton County or any adjoining counties made a bid for such deposits. Neither is there a bank in Newton County or any adjoining counties that will take the deposit under the provision of the statute authorizing the selecting of a depository where no bids are received.

They will not furnish the depository bond nor will they pay the one and one-half per cent interest required under this section.

The County Treasurer would now like to have an opinion from your office as to where he shall keep the money. The vault and safe in his office is neither fire proof nor burglary proof. The New York Casualty Company that made his bond is threatening to cancel the bond unless he complies with the law and keeps the money where designated. Perhaps you can give me some information on this question so I can advise him.

Is there any provision where the money may be deposited with the State Treasurer and thereby comply with the law?"

In your letter you refer to the opinion of this Office under date of August 14th, 1933, in which we reviewed the statutes and the cases on the subject in an eight-page opinion, and held that where the county depository had not been selected in the manner provided by the statutes of Missouri and no depository bond had been given by the bank as provided by statute, in the event of the failure of the bank and consequent loss of the county funds, the county treasurer was liable on his official bond for the loss. In that opinion we think our conclusions were, and are, correct.

In this letter you ask two questions; the first being:

"The county treasurer would now like to have an opinion from your office as to where he shall keep the money."

This question is really asking for our advice rather than a question of law and anything we might say would be an attempt to usurp the powers of the county court and the county treasurer as to where they should deposit the county funds. The statutes point out the methods for the selection of the county depositories.

Your second question is as follows:

"Is there any provision where the money may be deposited with the state treasurer and thereby comply with the law?"

We have searched the statutes and do not find where the county treasurer has any authority to deposit the county funds with the state treasurer, under the conditions as set forth, and neither do we find where the state treasurer has any authority to accept said funds for deposit.

We realize that the present financial and banking situation has created some vexatious problems for county officials in regard to the safeguarding of county funds, but it would be inappropriate for this Department to advise on matters that are purely local and the county officials of your county are in a better position than we are to determine the proper course to pursue. We are sure that we fully covered the subject in our former opinion to you of August 14th.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

CRH:EG