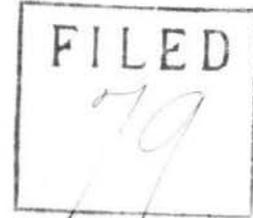


COUNTY DEPOSITORY BOND: Does not cover funds deposited by
County Collector under Section 9885,
Laws of 1933, page 464.

✓ 9/2
August 23, 1933.



Senator J. H. Russell, Jr.,
Chilhowee, Missouri

Dear Senator:

This Office acknowledges receipt of your letter of August 12th, 1933, in which you request an opinion as to the construction of Section 9885 R. S. 1929, as amended by Laws of 1933, shown at pages 464 and 465, of the Session Acts of 1933. For convenience we are setting forth your letter of inquiry in full, which letter is as follows:

"S. B. 254, found on page 464 session acts of 1933, amended section 9885, making it optional with County Courts to permit County Collector to give bond in the same manner and amount as heretofore, or could require him to 'deposit daily all collections of money in such depository or depositories as may have been selected by such County Court pursuant to the provisions of Section 12184, R. S. Mo., 1929, to the credit of a fund to be known as "County Collectors Fund"."

There are also other changes provided by S. B. 254 such as permitting the Collector's bond to be reduced if the above provision is complied with, providing he shall check on said County Collectors fund only to make distribution monthly as provided by law etc., but the question I would like to have your opinion on is this; - If the County Court requires the County Collector to make daily deposits as provided by this bill, in a depository which 'may have been selected by such County Court pursuant to the provisions of Section 12184', will the bond provided by Section 12187, Article 9, cover the money placed in a 'County Collectors Fund' as provided by Section

12184 of the same Article as amended by S. B. 254.

I am sure it was the intention of the legislature in passing this bill that the bond given by the depository should cover the money placed in the 'County Collectors Fund', just the same as it now covers the same money after distribution is made. It was the opinion of lawyer members of the Senate that such would be the case. However, there seems to be some doubt in this county in regard to the matter.

I do not know the custom followed by your office in regard to giving opinions. I am not sure that I am within my rights in asking you for an opinion. You will please advise me if I am not and I will have our County Attorney make the request.

With highest personal regards and best wishes,
I am,"

We note what you say relative to "the intention of the legislature in passing this bill that the bond given by the depository should cover the money placed in the 'County Collectors Fund', just the same as it now covers the same money after distribution is made. It was the opinion of lawyer members of the Senate that such would be the case."

The construction of a law put upon same, the intention of the Legislature and the opinions of its members are very persuasive as to the construction that should be put upon it. However, we must look to the statutes for the proper construction thereof.

We are setting out in full Section 9885 R. S. 1929, as amended at pages 464 and 465, Acts of 1933, because this is the particular section that you asked us to construe. Said section reads 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 one month 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, 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. Provided, that in all counties which now have or which may hereafter have a population of less than 75,000 inhabitants, according to the last preceding federal decennial census, the county court in such counties may require the county collector thereof to deposit daily all collections of money in such depository or depositories as may have been selected by such county court pursuant to the provisions of Section 12184, Revised Statutes of Missouri for 1929, to the credit of a fund to be known as 'County Collector's Fund;' provided further, that when such deposits are so required to be made, such county courts may also require that the bond of the county collector in such counties shall be in a sum equal to the largest collections made during any calendar week of the year immediately preceding his election or appointment, plus ten per cent of said amount; provided further, that no such county collector shall be required to make daily deposits for such days when his collections do not total at least the sum of One Hundred Dollars (\$100.00); and provided further the collector shall not check on such 'County Collector's Fund' except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositories."

The new Section 9885, as amended by Acts 1933, at pages 464-465, is the same as old Section 9885 down to the word "Provided" in the 17th line thereof, except the word "two" of the old section, in the 12th line, is changed to "one" in the new section, and the

year "1909" in the 21st line of the old section is left out of the new section entirely; both of which minor changes, as to the question involved, are immaterial.

Beginning with the word "Provided" in the 17th line, to the end of the section, was added by the Legislature of 1933. This amendment applies to Johnson County for the reason that it is a county which has a population of less than 75,000 inhabitants according to the last preceding federal decennial census. This amendment makes it optional with the county court by using the term, "may require the county collector thereof to deposit daily all collections of money in such depository or depositories as may have been selected by such county court pursuant to the provisions of Section 12184, Revised Statutes of Missouri for 1929, to the credit of a fund to be known as 'County Collector's Fund;'" And the statute further provides, "that when such deposits are so required to be made, such county courts may also require that the bond of the county collector in such counties shall be in a sum equal to the largest collections made during any calendar week of the year immediately preceding his election or appointment, plus ten per cent of said amount;"

The amended portion of said section has to do with the bond to be given by the county collector and does not in any way refer to the bond of the county depository.

Section 12184, R. S. 1929, provides how the depository for county funds should be selected. Section 12185, R. S. 1929, provides what procedure the bidders for the county funds shall take, and in said section it provides:

"* * * * *, that if his bid (referring to the successful bidder) should be the highest he will enter into the bond hereinafter provided.
* * * * *

Section 12186, R. S. 1929, is the next section, and is as follows:

"It shall be the duty of the county court, at noon on the first day of the May term in 1915, and every two years thereafter, to publicly open said bids, and cause each bid to be entered upon the records of the court, and to select as the depositories of all the public funds of every kind and description going into the hands of the county treasurer, and also all the public funds of every

kind and description going into the hands of the ex officio collector in counties under township organization, the deposit of which is not otherwise provided for by law, the banking corporations, associations or individual bankers whose bids respectively made for one or more of said parts of said funds shall in the aggregate constitute the largest offer for the payment of interest per annum for said funds: Provided, that the court shall have the right to reject any and all bids. The interest upon each fund shall be computed upon the daily balances with the depository, and shall be payable to the county treasurer monthly, who shall place the interest on the school funds to the credit of those funds respectively, and the interest on all other funds to the credit of the road and bridge fund. The county clerk shall, in opening the bids, return the certified checks deposited with him to the banks whose bids were rejected, and on approval of the bonds of the successful bidder or bidders return the certified check or checks respectively to the bank or banks whose bid or bids are accepted."

Now, your County (Johnson) is, by referring to the Blue Book of 1931 and 1932, not under township organization and, therefore, the county court of your county only selects the depositories of all the funds of every kind and description going into the hands of the county treasurer.

In the case of Deal v. Bank of Smithville, 52 S. W. (2d) 201, l. c. 204, the Kansas City Court of Appeals said:

"* * * * * The law does not appear to require the collector to deposit funds in his possession or to which he is entitled in any designated depository. No provision of that character has been called to our attention. Article 9, chapter 85, R. S. 1929 (section 12184 et seq. (Mo. St. Ann. section 12184 et seq.)), deals with the subject of county depositories, and section 12186, R. S. 1929 (Mo. St. Ann. section 12186), provides for specified depositories of all public funds coming into the hands of the county treasurer or into the hands of the ex officio collector in

counties under township organization. There is no such provision applicable to a county collector. It appears that he is personally invested with the care and custody of funds in his hands until such time as he is required to deliver them to the county treasurer, and he is required to give a bond to the state, satisfactory to the county court, conditioned that he will faithfully collect and pay over the county and state revenue and perform the duties of his office according to law. Section 9885, R. S. 1929 (Mo. St. Ann. Section 9885).
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It is, therefore, the opinion of this Department that the depository bond given by the county depository, selected by your county court, in accordance with the provisions of Sections 12184, 12185, 12186 and 12187, R. S. 1929, does not cover the funds deposited by your county collector under the provisions of Section 9885, as amended at pages 464-465, Acts of 1933, which the county court in your County (Johnson) may require the county collector to deposit to the credit of a fund to be known as "County Collector's Fund", before distribution by the county collector.

We hope that the above answers your inquiry, but should there be any other question we shall be glad to serve you. We remain,

Very truly yours,

GOVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG