

OFFICER--SURETY BOND--COUNTY COURT: County Court must require new surety bond when newly elected member of the County Court is on the old bond, but this contingency does not make the new judge ineligible to the oath of office.

December 22, 1934.



Honorable C. M. Berrey
Presiding Judge
Audrain County Court
Mexico, Missouri

Dear Sir:

Your request for an opinion of December 12th, is as follows:

"Our County Court would like very much to have your opinion as to whether a man elected as Judge of the County Court is eligible to take office as such Judge while he is surety on the bond of the Collector of the County.

"If you will give me this information by the last of this month, it will be greatly appreciated."

Section 9885 Laws 1933, page 464 provides for the giving of a County Collector's bond and the conditions thereof 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 Collectors' 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."

It is no doubt the above statutory bond that you refer to in your letter.

Section 9888, R. S. Mo. 1929, provides as follows:

"Such bond shall be executed in duplicate; one part thereof shall be

deposited and recorded in the office of the clerk of the county court, and the other part shall be transmitted by the clerk to the state auditor."

Section 9891, R. S. Mo. 1929, provides as follows:

"The collector's bond, when received by the auditor, shall be carefully examined, and if found to be made in conformity to law, and the sureties satisfactory, he shall file the same in his office, and immediately certify the fact thereof to the clerk of the county court; but if said auditor finds said bond to be not in accordance with law, or if he has reason to doubt the sufficiency of the security, he shall immediately return the bond to the clerk of the county court, who shall notify the collector to correct said bond, or make a new bond, as may be required by the auditor. If a new bond is required, it shall be approved and recorded, and subject to the requirements of this section, the same as the first bond given by the collector. No tax book or lists shall be placed in the hands of the county collector until the auditor's certificate, under the seal of his office, has been received by the clerk of the county court, showing that the collector's bond has been received and filed in the auditor's office. Any evasion of this section by the clerk of the county court or collector shall subject them each to a penalty of not less than five hundred dollars, and all damages and costs, to be recovered before any court of competent jurisdiction in this state; and the auditor is hereby required to bring suit, without delay, for every evasion of the requirements of this section, as soon as the same comes to his knowledge--the amount recovered on such fines to be paid into the state treasury as revenue fund: Provided, that nothing in this section shall be construed as relieving the sureties of a collector from liabilities incurred under a bond not approved and filed by the auditor."

Thus we see that provision in law is made for recording duplicate copies of the collector's bond, and also

for the giving of a new bond when the occasion demands.

Section 2847, R. S. Mo. 1929, provides as follows:

"No sheriff, collector, constable, county treasurer, attorney at law, clerk of any court of record, judge or justice of any court of record, shall be taken as surety in any official bond that may be given by any officer in this state."

The above section has been construed as directory in State ex rel. Howell County v. Findley, 101, Mo. 368, 14 S. W. 111, 1. c. 112:

"* * * but statutes of this sort are regarded as directory merely, and as not designed to avoid the bonds where the statute has been disregarded."

Section 2848, R. S. Mo. 1929, provides as follows:

"When it shall come to the knowledge of any court whose duty it is to approve the official bonds of any of the officers named in section 2846, that a surety of any of the said officers has become a non-resident of the county in which his official bond was executed and required to be filed, or has died, become insolvent or otherwise insufficient, said court shall make an order requiring the officer for whom any such surety executed the bond, on a day therein named, to appear and show cause why he should not give additional security."

Section 2849, R. S. Mo. 1929, provides:

"If, upon investigation of the matter, it shall appear that any surety has become a non-resident of the county in which the bond is filed, has died, becomes insolvent, or in any otherwise insufficient, the court shall require the officer for whom such surety executed the bond to give additional security by a day named; and, in default thereof, the said office shall be forfeited, and the same shall become vacant, and the facts shall be certified to the court or officer whose duty it is to fill such vacancy."

Section 2850, R.S. Mo. 1929, provides:

"When the additional bond is given and approved, the former sureties shall thereby be discharged from any misconduct of the principal after the approval of said bond."

There is nothing in the above statutes that provide for ineligibility to office, at such a contingency outlined in your letter. The office of county judge is a constitutional office provided for in Article VI, Section 36 of the Missouri Constitution as follows:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

We find nothing in the Constitution that would prohibit the elected judge from taking his oath of office, at such a contingency outlined in your letter.

CONCLUSION.

It is the opinion of this office that where one's name appears as a surety on the county collector's bond he is liable personally as such surety, even though such name appears there contrary to the intendments of Section 2847, supra. On the other hand where the surety was qualified at the time he became surety on the collector's bond, and was not then disqualified by reason of any statutory inhibition as set out in Section 2847, supra, (at the time the bond was signed), the disqualification which came about subsequent to the signing of the bond does not operate as a bar to the surety taking over the office of county judge, to which said surety was elected. The happening of such a contingency which brings about an unhealthy condition, which has been frowned upon by the Legislature, is sufficient reason for the County Court to require a new bond. Anticipating the emergency to which you relate, the Legislature has provided a corrective measure. The Legislature made it mandatory on the County Court to require a new bond, for in Section 2848 they said, "said court shall make an order requiring the officer for whom any such surety executed the bond, on a day therein named, to appear and show cause why he should not give additional security." For a failure to

Honorable C. M. Berrey -6- December 22, 1934.

comply with the orders the collector forfeits his office, but if the new sureties be approved, the former sureties are discharged. The fact that the new judge is liable as surety on the collector's bond at the time he takes over his office does not make him ineligible to said office.

Respectfully submitted

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APPROVED:

ROY MCKITTRICK
Attorney General.

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