

COUNTY COURTS: *- AUTHORIZED TO EXAMINE COLLECTOR'S BONDS.

COLLECTORS' BONDS: -- MAY BE EXAMINED BY COUNTY COURT.

" " --"ADDITIONAL BOND" MEANS A NEW BOND.

1-24
January 23, 1934.



Honorable Joseph M. Bone, Jr.
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Sir:

We have your request of December 27, 1933, for an opinion upon the following state of facts:

"That the present collectors bond of Audrain County, as required by the county court was set at approximately \$430,000.00. He gave a personal bond to qualify, since giving this bond, two of the sureties are deceased, some have made assignments of their property and others have become insolvent.

"The county court wishes to require an additional bond. As I understand the law, this requires the giving of a New Bond. The Sections applicable are 9885, 9892 and 9893, R. S. of Mo. 1929.

"Also, Section 9885 R. S. of Mo. 1929 was amended by the laws of 1933, page 464, which makes the minimum requirements of the bond, to be 'in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment plus 10 per cent of said amount'. This amendment makes the minimum requirement less than that required in the original Section 9885 R. S. of Mo. 1929.

"Kindly advise me whether if an additional or new bond is given, the original or the amended Section is applicable."

The amount of the collector's bond was originally controlled by Section 9885, R. S. Mo. 1929, which is now repealed and a new section covering the amount of said bond enacted - Laws of 1933, page 464.

Section 9892, R. S. Mo. 1929, provides:

"The county court shall, at the end of the first year, carefully examine the bond given as collector, and may again examine the same at any time before the tax book of the second year of his term shall be delivered to him, and by such examination ascertain if the bond be sufficient, and the sureties thereto still solvent and sufficient, and upon such examination, if found to be necessary, the court shall require an additional bond, as collector, with good security, to be approved by the court, as in the taking of the original bond."

Under the above statute, the duty to examine the bond of the collector is mandatory upon the county court, since the statute uses the word "shall." This section also provides that the court "may" again examine said bond before the tax book for the second year of the collector's term is delivered to the collector. This second examination of the collector's bond by the county court is a matter resting in the discretion of the county court, because the statute uses the term "may". At either examination of the collector's bond, it is the duty of the county court to ascertain if the bond is sufficient, and the court may require an additional bond. This statute (9882) is silent as to any examination of the collector's bond during the third and fourth years of the collector's term.

Under Section 2848, R. S. Mo., 1929, a general power is vested in all courts whose duty it is to approve official bonds, to examine them at any time whenever such court possesses knowledge that, first, a surety has become a non-resident; second, has died; third, has become insolvent or otherwise insufficient. This section reads as follows:

"When it shall come to the knowledge of any court whose duty it is approve the official bonds of any of the officers named in Section 2848, 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."

The officers referred to in this section include the collectors, - Section 2848, R. S. Mo. 1929.

When this section (2848) and Section 9892, supra, are considered together, we see no conflict between them. Section 9892 imposes first, a mandatory duty - second, discretionary duty to examine the collector's bond at specific times, namely, when the bond is first given and thereafter before the tax book of the second year is delivered to the collector.

Section 2848 vests in the county court, which has the power to approve the collector's bond, authority at any time to make inquiry into sufficiency of the collector's bond. Under this Statute, provision is made for a hearing upon this question, at which time the collector is entitled to appear and offer such evidence as he may have to show that his bond is sufficient. At any such hearing, it is a question of fact for the county court to decide as to whether or not the bond under examination is sufficient, and in deciding this question of fact, it is the duty of the county court to hear testimony - State ex rel. Adamson v. Lafayette County Ct., 41 Mo. 545 (1867). If at this hearing, the county court finds as a matter of fact that the bond is insufficient, then such court may require the collector to give an additional bond within such time as the court may fix - Section 2849, R. S. Mo. 1929. It must be noted in passing that Section 2848 uses the term "additional bond".

However, 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."

When Sections 2848 and 2850 are read together, the only meaning that the term "additional bond" contained in Section 2848 can be given is that the collector shall give a new bond, because upon the execution of the second

bond, the sureties on the first bond are released.

A new section, 9885, Laws of Missouri, 1933, page 464 was approved May 12, 1933, and went into effect July 24, 1933. This new section imposed additional duties upon the collector and placed in the hands of the county court power to require the collector to deposit daily collections in a depository of the county court's own selection. Prior to the amendment, the collector was required under Section 9885 to give a bond "in a sum equal to the largest total collection made during any two months of the year preceding his election or appointment plus 10% of said amount." Under the new section, Laws of Missouri, 1933, page 464, the collector is required to give a bond "in a sum equal to the largest total collection made during any one month of the year preceding his election or appointment plus 10% of said amount." Prior to the enactment of this new section, the collector selected his own depository and deposited his collections therein daily, and distributed said collections monthly to the State and County treasuries - Section 9927, R. S. Mo. 1929.

It will be seen that the total amount of money in the hands of collector at any time has been greatly reduced by the 1933 new section and therefore, in justice to the collector, the amount of his bond was reduced.

It is, therefore, the opinion of this office that the county court has ample authority to inquire at any time into the sufficiency of collector's bond, and if in the opinion of the county court said bond is insufficient, then the county court may require the collector to give a new bond. In the giving of such new bond, the collector shall give it in accordance with Laws of Missouri, 1933, page 464.

Yours very truly,

APPROVED:

ROY McKITTRICK
Attorney-General.

FRANKLIN E. REAGAN
Assistant Attorney-General.

FER/J