

RELATING TO SECURITY OF DEPOSITORIES OF CITIES OF THIRD CLASS:

5-19
May 8, 1934



Mr. John Hogan
City Clerk and Ex-Officio Collector
Maplewood, Missouri

Dear Sir:

We acknowledge your letter of date April 20th, 1934, in which you state and inquire as follows:

"May we ask your opinion in re:
liability for loss of City Funds
through bank failures.

All our funds are handled as per State law, secured by collateral of United States Bonds or Securities, held in the amount of 10% above the actual total deposit.

All collections are transferred monthly from the Collector to the Treasurer.

Collector is under \$10,000.00 bond.
Treasurer is under \$10,000.00 bond.

The Bonding Company states that the Collector and the Treasurer are each personally liable for any loss over and above the bond average.

They demand the Collector to transfer daily all collections to the Treasurer. What, in your opinion is the reason for this demand. What liability do these officials assume?

We are enclosing herewith a copy of our agreement with the Citizens National Bank.

In case of bank failure, could the City levy on the U.S. securities which are put up as collateral by the depository bank?"

I.

Depositories of cities of the third class shall secure funds of such cities, in the manner provided by statute.

Mr. John Hogan

May 8, 1934

Section 6794 Revised Statutes 1929, relating to cities of the third class, reads in part as follows:

"Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond payable to the city, to be approved by the mayor and filed with the city clerk, with not less than three solvent sureties, who shall own unencumbered real estate in the state of as great value as the amount of said bond-- the penalty of said bond to be at least double the revenues of the city for any one year, and conditioned for the faithful performance of all the duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository and accounted for according to law; and for a breach of said bond, the city, or any person injured, may maintain an action in the name of the city, to the use of the person injured thereby."

There does not appear to be any authority in the statute for a city of the third class to accept in lieu of real estate as security, bonds of the United States or of the State of Missouri.

It will be observed, that depositories of county funds may so secure county funds, but the authority is derived from section 12187 R.S. 1929.

The fact that your city operates under commission form of government would not alter the case.

Section 6944 R.S. 1929, provides as follows:

"All laws governing any city under its former organization and not inconsistent with the provisions of this article shall apply to and govern such city after it

Mr. John Hogan

May 8, 1934

adopts the form of government herein provided, or all by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this article."

It therefore appears that all laws governing the city under its former organization, which are not inconsistent with the provisions of laws relating to commission form of government, shall apply to and govern such city.

However safe it may appear, in securing your deposits with government bonds, we are constrained to hold that no authority to the city, appear empowering it to secure their deposits in any other manner than provided by the statutory law.

II.

It is the duty of city collector to pay into the city treasury, monthly, all moneys received by him from all sources.

Section 6785 H. S. 1929, relating to cities of the third class reads in part as follows:

"It shall be the duty of the city collector to pay into the treasury, monthly, all moneys received by him from all sources, which may be levied by law or ordinance; also, all licenses of every description authorized by law to be collected, and all moneys belonging to the city which may come into his hands. He shall give such bond and perform such duties as may be required of him by ordinance."

Section 6797 H. S. 1929, relating to cities of the third class reads in part as follows:

".....The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository,....."

From section 6785, Supra., it appears that a city collector is required to pay monthly all funds collected by him on account of the city from any source.

Mr. John Hogan

May 8, 1934

It is only a cautionary matter that your bonding company insists that the collector pay over to the city treasury daily, for the reason when the funds belonging to the city are deposited by the treasurer in the depository, neither the collector or treasurer would be responsible for loss of said city funds through the negligence, failure or wrongful act of such depository. And too, it could be a matter of contract between the bonding company and the city collector.

Respectfully submitted,

W. W. Barnes

Assistant Attorney-General

APPROVED:

Attorney General