

RELATING TO THE LIABILITY OF THE DEPOSITORY BONDSMEN FOR THE
CONVICT FUND HELD BY THE PRISON BOARD:

9-12

September 11, 1934



Hon. S. B. Hunter
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your letter of August 18th, 1934, in which you state and inquire as follows:

"In what is known as the "Convict Fund", we have deposited in the bank more than \$18,000.00. This is money belonging to the convicts which they have deposited with us from time to time, and which they withdraw as permitted or when they leave the institution.

We formerly had part of this money invested in Government bonds. These bonds were matured some months ago. Although we may occasionally have some expenses in dealing with this fund, this bank balance is producing no return at the present time. Has the Board the right and authority to deposit a part of this money on time, thereby getting a small return from it? There are \$10,000.00 or \$12,000.00 that could be kept on time deposit.

The bank gives the Penal Board a bond to secure deposits placed with the bank. If a part of this "Convict Fund" were withdrawn from the daily checking account and deposited in the same bank either in a savings account, which bears interest, or as a time deposit, which would also bear interest, would this fund be secured by the bond given by the bank? What would be the additional responsibility of the Board, if any, if this fund were deposited so it would return some revenue?

It is possible that a bank would not feel that it should pay interest on a deposit or certificate of deposit, for which it is required to give bond to secure its payment."

I.

Funds belonging to convicts are secured by bond of the selected depository of Department of Penal Institutions.

Section 8402 Revised Statute, provides in part as follows:

"Said board shall take charge of all money and other articles of value which may be brought to the penitentiary by any convict, or come into his possession while in the penitentiary, which money or valuables, whenever the convict is discharged from prison or the same is legally demanded, shall be returned to such person as may be legally entitled to receive the same; and the board shall keep a book in which such receipts and disbursements shall be duly and properly noted."

It will be observed from the provisions of the foregoing statute, that the State Prison Board is the legal and statutory trustee of all the convicts' fund while confined in the penitentiary, and have charge of all moneys or other articles of value which such convicts, may bring or come into their possession while in the penitentiary.

The conditions of the bond held by the commissioners of the Department of Penal Institutions, and executed by The Central Missouri Trust Company, as principal, are as follows:

"Now if the said Central Missouri Trust Company as principal shall well and truly in every respect perform all the duties and obligations devolving by law upon said depository and shall pay upon presentation all checks drawn on such depository by officials designated by the Board of the Department of Penal Institutions to so act, whenever funds or moneys of such institution shall be in such depository and shall faithfully keep all the funds and moneys of such institution which shall come into the hands of said depository and account for the same according to law, then this obligation shall be null and void, etc."

From the conditions of said bond, we find said depository obligates itself to "keep all funds

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and moneys of such institutions which shall come into the hands of said depository and account for the same."

Since, as we have said, the State Prison Board is made trustee of the funds brought to the penitentiary, and all funds acquired by any and all convicts while in said penitentiary, they are held and bonded to account for such funds as much as any other funds coming into their hands.

This department therefore rules that the conditions of the bond of the depository, The Central Missouri Trust Company, are sufficiently broad as to include and secure the funds referred to in your letter as "Convict Funds", and in the event said Central Missouri Trust Company should fail to safely keep and account for said funds, then such bond would become effective, and action upon the same could be maintained in the name of the State of Missouri to the use of the Prison Board, it matters not how such funds are received.

Respectfully submitted,

W. W. Barnes

Asst. Attorney General

APPROVED:

Attorney General