Collector's Bond - Township Board may properly accept new bond under Extra Session Laws 1933-1934, p. 167, where old bond does not cover full term as required by law.

7.31

July 21, 1934.

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Hon. Dewey A. Routh,
Prosecuting Attorney of Vernon County,
Nevada, Missouri.

Dear Sir:

Answering your letter of July 5, 1934, which is as follows:

"The Township Collector of Center Township of Vernon County, Missouri, one Mrs. Carr, gave an enormously large bond a year ago in order to qualify for office. A great deal of trouble was experienced in obtaining this bond and the bonding company only gave it upon one year. The time has now arrived when she must renew her bond and she is again going to experience a great deal of trouble in getting the bonding company to bond her.

"Under the new law passed by the Extra Session in 1933, Section 12279, the bonds are considerably cut down. Of course, it is my understanding that when a person has made a bond, it cannot be cut down during their term of office. However, in the case cited, the bond was only made for a year and will have to be remade for the simple reason that the bonding company would not make it for any longer time.

"I would like to have your opinion as to whether or not the Township Collector could come under the new law and could get a bond in accordance with the new law. Such a bond could be easily obtained."

First, it is apparent that the bond given in the first instance was not in full compliance with the law, Sec. 12279, R. S. 1929, as it ran for only one year, whereas the statute requires the bond to be effective "during the period for which such collector shall be elected or appointed." However, such a bond having been given and accepted, there certainly would exist a common law liability on such a bond for a breach, if any, of its terms.

Also a mere failure of an officer to file his bond within the time prescribed by law does not ipso facto vacate his office. State ex rel Blankenship v. Texas County, 44 Mo. 230; State v. Churchill, 41 Mo. 41.

In 46 C. J. 962, Sec. 94, it is said:

"The legislature has power to change the law with regard to official bonds and to exact a new and additional bonds variant in condition, penalty, obligation and surety, from those executed under the existing law under which the officer was inducted into and held office."

The new statute of 1934 also reads at the end:

"Provided, the county court or township board shall annually examine the collectors or trustees bond as to form and sufficiency of surety and in case of doubt shall require additional security."

It is therefore, in our opinion, eminently proper for the township board in this instance to require a new bond in accordance with the present statute, which obviously was passed by the legislature to relieve officers from the hardship of the excessive requirements of the old law.

Respectfully yours,

WILLIAM ORR SAWYERS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General