

COUNTY COLLECTORS: County Collector relieved of liability in event of bank failure where he has deposited his funds in county depository as required by county court under Section 9885, Laws of 1933, pp. 464-465.

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February 13, 1935.



Hon. P. C. Breit
Prosecuting Attorney
Andrew County
Savannah, Missouri

Dear Mr. Breit:

This is to acknowledge receipt of your letter of January 22, 1935, with request for an opinion; which letter is as follows:

"Our county collector elect, Lloyd R. Zahnd, has brought up the question of liability for loss of funds collected by the county collector due to bank failure when the depository used by the collector has been designated by the county court and he has been ordered to deposit all collections in this depository daily in keeping with Section 9885, Laws of Missouri 1933.

Section 9885, Laws of Missouri 1933, provides that the county collector shall deposit daily '--all collections of money in such depositories as may have been selected by such county court pursuant to the provisions of Section 12184, Revised Statutes of Missouri 1929---'. The county collector has no alternative but to deposit the collections as directed, and he is given no authority to demand or take security from these depositories, the presumption being that the security furnished by these depositories to the county court for the 'county treasurer's funds'

"shall also cover the collector's funds. This being so, is it your opinion that the county collector would be relieved of responsibility for loss of such funds due to the failure of any designated depository? The county treasurer is relieved of such liability by Section 12198, Revised Statutes of Missouri for 1929, and it is our presumption that this relief would extend to the county collector since he must deposit his funds in banks designated by the county court and not banks of his own selection.

I will greatly appreciate your giving me your opinion on this point. Is the county collector relieved of liability in the same manner as the county treasurer whenever the county court requires the county collector to deposit all collections in banks designated and selected as provided in Section 12184, Revised Statutes of Missouri 1929.

It is quite obvious that the intention of the framers of this new legislation was to provide a place of safekeeping for the collector's funds and also provide security, and it is reasonable to suppose it was their intention that the collector be relieved of personal responsibility for the loss of funds due to bank failure, as the law gives him no alternative but to deposit his collections as directed and it gives him no authority to require security. Your opinion on this point will be greatly appreciated."

The opinion which you request is whether or not a county collector, in counties having a population of less than 75,000, is relieved of responsibility for loss of funds due to the failure of a depository designated by the county court

in such counties under Section 9885, R. S. No. 1929, as amended by Laws of Missouri, 1933, at pages 464-465.

We are setting forth in full the above section, as amended, for the reason that this is the particular section which must be construed to answer your question. Said section reads 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 12134, 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."

The new Section 9885, as amended by Laws of 1933, is the same as old Section 9885 down to the word "provided" in the seventeenth line thereof, except the word "two" of the old section in the twelfth line is changed to "one" in the new section and the year 1909 in the twenty-first line of the old section is left out of the new section entirely, both of which minor changes as to the question involved are immaterial.

That portion of the section beginning with the word "provided" in the seventeenth line to the end of the section, was added by the Legislature of 1933. This amendment applies to Andrew County for the reason that it is a county having a population of less than 75,000 inhabitants according to the last preceding federal decennial census. This amendment makes it optional with the county court, by using the term "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, 1929, to the credit of a fund to be known as 'County Collectors' Fund', and the statute further provides, "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 week immediately preceding his election or appointment, plus ten per cent of said amount."

We assume from your letter that the county court of Andrew County has exercised its discretionary powers as given it by Section 9885, as amended, and has required 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, R. S. 1929, to the credit of a fund to be known as "County Collectors' Fund", and if so the county collector has no discretion in the matter and must deposit the moneys received by him in the county depository or depositories in accordance with the provisions of this section.

Prior to the amendment of 1933, the county collector was not required to deposit funds in his possession in any designated depository, as was stated in the case of Deal v. Bank of Smithville, 52 S. W. (2d) 201, l. c. 204:

"The law does not appear to require the collector to deposit funds in his possession or to which he is entitled in any designated depository. No provision of that character has been called to our attention. Article 9, chapter 85, R. S. 1929 (section 12184 et seq. (Mo. St. Ann. Sec. 12184 et seq.)), deals with the subject of county depositories, and section 12186, R. S. 1929 (Mo. St. Ann. Sec. 12186), provides for specified depositories of all public funds coming into the hands of the county treasurer or into the hands of the ex officio collector in counties under township organization. There is no such provision applicable to a county collector. It appears that he is personally invested with the care and

"custody of funds in his hands until such time as he is required to deliver them to the county treasurer, and he is required to give a bond to the state, satisfactory to the county court, conditioned that he will faithfully collect and pay over the county and state revenue and perform the duties of his office according to law. Section 9885, R. S. 1929 (Mo. St. Ann. Sec. 9885)."

In answering your question, we are not unmindful of the rule in this state that a public officer entrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer, and that a public officer is an insurer of public funds which he has lawfully received. This rule of law is sustained by a long line of cases in Missouri.

University City v. Schall, 275 Mo. 667, 205 S. W. 631;
City of Fayette v. Silvey, 290 S. W. 1019, l. c. 1021;
Bragg City Special Road District v. Johnson, 20 S. W.
(2d) 22, l. c. 24;
Glaze v. Shumard, 54 S. W. (2d) 726, l. c. 728.

Where a depository has been duly designated by the proper officials in accordance with a statute giving that power to the county court or other fiscal agent of any political subdivision, the rule is otherwise, and the public officer is not an insurer of public funds deposited in a depository or depositories in the event of the failure of such designated depository. In support of this rule of law we cite the following authorities:

In 29 Cyc. 1439, it is stated as follows:

"Any violation of law, as the deposit of public funds in the officer's personal account, will make the officer liable. But if the law has designated banks as depositories for public moneys, the

"deposit of an officer of public money in such a depository relieves him from all liability."

And, also, in 46 C. J. 1040, Section 315, the rule is stated as follows:

"The general rule that a public officer is an insurer of public funds in his custody has been applied also where a loss is occasioned by the failure of a public depository, but if the law has designated public depositories for public moneys, the deposit by an officer of public moneys with such a depository relieves him from all liability."

City of Parsons v. Fidelity and Deposit Company, 29 Fed. (2d) 417, cited approvingly the following:

"In Stephens v. City of Ludlow et al., 159 Ky. 729, 169 S. W. 473, it is held that:
'When * * * the selection of the depository is taken out of his (treasurer's) hands and he is directed by the city to keep its funds in an institution selected by it, the city and not the treasurer assumes responsibility for the integrity and solvency of the institution so selected."

In City of Newburgh v. Dickey, 150 N. Y. S. 175, 1. c. 178, it is said:

"It is the settled law of this state that a public official assumes all risk of loss and is charged with the duty to act as debtor for the funds in his custody. Tillinghart v. Merrill, 45 N. E. 375, 34 L. R. A. 678. But in that case the

"court say that they do not wish to be understood as establishing a rule as absolute liability in either event. Neither the requirement of this bond nor the general rule would extend to moneys received by the official while those moneys were held by a depository designated by another body or officer of the city in accord with law and exclusive of any power cast upon him. Dillon on Municipal Corporation, 5th Ed., page 764, citing Perley v. Muskegon County, 32 Mich. 131; Hobbs v. United States, 17 Ct. of Claims 139."

Mechem, on "Public Officers", page 610, Section 912, says the following:

"It is made the duty of the officer, either by the terms of the statute prescribing his duties, the performance of which the bond, in general terms, is given to secure or by the very language of the bond itself, to safely keep the public moneys which come into his hands and to pay them over according to law. In a few instances it is further provided that they shall be deposited in certain manner or shall be kept in certain places or other receptacles provided by the public; in which cases the officer who complies with the requirements is relieved from liability."

In the case of Jordon v. Baker et al., 66 S. W. (Ky.) (2d) 84, l. c. 88, is said the following:

"In the Stephens case, supra, 159 Ky. 729, 169 S. W. 473, 475, in discussing the question as to the effect of the selection and designation of the depository by the taxing authority, upon the liability of the collecting officer, we said:

"When, however, the selection of the depository is taken out of his (official custodian's) hands and he is directed by the city to keep its funds in an institution selected by it, the city, and not the treasurer, assumes responsibility for the integrity and solvency of the institutions so selected. Commonwealth v. Godshaw, 92 Ky. 435, 17 S. W. 737 (13 Ky. Law Rep. 572)."

In Edwards et al. v. Logan County, 50 S. W.(Ky) (2d) 83, 1. c. 85, is stated the following:

"A county treasurer is a ministerial officer or agent with his powers and duties minutely delineated in section 931 of the Statutes. If an official act or conduct be not prescribed by the statute, it is subject to the will and order of the fiscal court. Whatever discretion he may have in discharging the duties of office, it is subordinate to the exercise of the discretion of that body. Where it has not specifically exercised its discretionary control, the treasurer within the scope of his powers may use his own judgment, with accompanying responsibility. So, with respect to keeping the funds of the county, in the absence of specific orders he may, as a necessary corollary to his duty as custodian, choose the depository. The fiscal court is the master; the treasurer, the servant. When it speaks authoritatively, he must obey; and, when he does, he is protected. Authority for these statements and conclusions may be found in Harrison v. Logan County, 129 Ky. 48, 110 S. W. 377, 33 Ky. Law Rep. 465; Cain v. Burroughs Adding Machine Co., 180 Ky. 567, 203 S. W. 315; Stephens v. City of Ludlow, 159 Ky. 729, 169 S. W. 473; Pulaski County v.

"Richardson, 225 Ky. 556, 9S.W. (2d) 523. Compare Johnson v. Fleming, Commissioner, 116 Ky. 680, 50 S. W. 855, 21 Ky. Law Rep. 4. Therefore, when the fiscal court of Logan county directed its treasurer to deposit its funds in the bank of Russellville, and he obeyed, the fiscal court assumed responsibility for the integrity and solvency of the institution and exonerated him from loss of funds if suffered solely on that account. Commonwealth v. Godshaw, 92 Ky. 435, 17 S. W. 737, 13 Ky. Law Rep. 572; Stephens v. City of Ludlow, supra. Among foreign cases to the same effect are Perely v. County of Muskegon, 32 Mich, 131, 20 Am. Rep. 637; City of Newburgh v. Dickey, 164 App. Div. 791, 150 N. Y. S. 175; State v. Bobleter, 83 Minn. 479, 86 N. W. 461; Holt County v. Cronin, 79 Neb. 424, 112 N. W. 561. See, also, 46 C. J. 1040; Stearns on Suretyship, Sec. 166."

Also, in Thomas J. Hobbs v. United States, 17 U. S. Court of Claims 189, we find the following:

"If a disbursing officer in good faith, without knowledge of the suspension of a bank's solvency and without the expectation of gain or other private motive, withdrew public moneys from the treasury and deposited them with the bank, it being a designated depository, and the deposit being at that time authorized by law, the loss of the moneys through the failure of the bank cannot be imputed to the fault or negligence of the officer."

It is, therefore, our opinion that if the county court has selected a county depository in accordance with the provisions of the statutes and has further exercised its discretionary power and required the county collector to deposit his

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collections of money in accordance with the amendment, Laws of 1933, page 464-465, that is, to the credit of a fund to be known as "County Collector's Fund" in the county depository, in that event the county collector would be relieved of liability by reason of the failure of such designated depository.

Very truly yours,

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APPROVED:

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