

COUNTY COLLECTOR:

CIRCUIT CLERK:

County Collector to make daily deposits in such depository as county court may select.

- (1) Deputy to be paid from general revenue of county.
- (2) Ex-officio recorder of deeds not to charge a fee for recording conveyances made to county.

5-13
May 10, 1935.



Hon. G. R. Breidenstein
Prosecuting Attorney
Clark County
Kahoka, Missouri

Dear Sir:

This will acknowledge your request for an opinion which reads as follows:

"I would like to have an opinion from your department upon the following questions.

"Section 9885, of the Laws of 1933, page 484, provides that 'the County Court 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, R. S. Mo. 1929, to the credit of a fund to be known as County Collectors Fund.' If the county court requires the Collector to make such deposits, and the bank where such deposits are made should fail, would the collector and his bondsmen be liable for the loss or would the loss fall on the county? Is it compulsory that the court should select such depository and require the collector to make his deposits there, or may the court if it prefers let the collector select his own depository?

"The population of this county is between 10,000 and 12,500. The circuit clerk is ex-officio Recorder of Deeds. The fees from this office are sufficient to pay the circuit clerk the

salary to which he is entitled by law, but are not sufficient to pay the salary of his deputy in addition. Should not the circuit clerk turn in to the treasurer all fees collected over and above his own salary, and the deputy be paid from the general revenue of the county?

"May the Recorder of Deeds charge a fee for recording conveyances made to the County."

Section 12184, R. S. Mo. 1929, provides:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals from banking corporations, associations, or individual bankers in such county as may desire to be selected as the depositaries of the funds of said county. For the purpose of letting such funds such county court shall, by order of record, divide said funds into not less than two nor more than ten equal parts, and the bids herein provided for may be for one or more of such parts. Notice that such bids will be received shall be published by the clerk of said court twenty days before the commencement of said term in some newspaper published in said county, and if no newspaper be published therein, then such notice shall be published at the door of the courthouse of said county: Provided, that in counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are herein conferred upon county courts with reference to county funds at the same time and manner, except that township funds shall not be divided, but let as an entirety: Provided, also, that in all cases of the letting of township funds, three notices posted in three public places by the township clerk, will be a sufficient notice of such letting."

We must rule under the provisions of the above statute that it was the intent of the Legislature to make it mandatory upon the county courts in each of the counties of this State to select the depositories of county funds. It is further our opinion that superintending control of funds of the county are to be exercised by the respective county courts and that they shall be charged with carrying out the provisions of the above statute and of subsequent statutes hereinafter referred to.

Section 12185, R. S. Mo. 1929, provides the procedure that shall be followed in the selection of a county depository.

Section 12187, R. S. Mo. 1929, provides that within ten days after selection of a depository (by county court) that it shall be the duty of each successful bidder pursuant to the provisions of Section 12185, of R. S. Mo. 1929, to execute a bond payable to the county with not less than five solvent sureties, who shall own unencumbered real estate in this State as of great a value as the amount of the bond, and said bond shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon said depository.

Section 9885, R. S. Mo. 1929, Laws of Mo. 1933, page 464, provides in part:

"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 12184, 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;
****."

In light of the foregoing, it is our opinion the Legislature intended to make it discretionary with the county court as to whether or not it should require collector to make daily deposits in such depositories as may have been selected under the provisions of Section 12184, supra. Further, you will note under the provisions of Section 9885, supra, in the event the county court requires daily deposits to be made, it (county court) shall require a bond. We rule that the county court shall select such depositories as herein above set forth in Section 12184; that the county collector nor his sureties will be liable on his bond in the event such bank or banks would fail; such banks having been selected by the county court; that the county collector, under the above provisions, could not select his own depositories as that is a function of the respective county courts.

In answer to the question set forth in paragraph 3 of your request for an opinion, we are enclosing a copy of an opinion dated March 7, 1934, addressed to Honorable Birt P. Bryant, Clerk of the Circuit Court, Dunklin County, Kennett, Missouri, signed by Franklin E. Reagan, Assistant Attorney-General, approved by Roy McKittrick, Attorney-General.

Your attention is directed to page numbered 2 and titled "II. Deputy Circuit Clerks." You will find that this fully answers the question set forth in your letter.

In consideration of your last question, we direct your attention to Section 11814, R. S. Mo. 1929, Laws of Missouri, 1933, page 372, which reads in part as follows:

"It shall be the duty of the clerks of all courts of record to charge and collect, in all cases, every fee accruing to their offices under the provisions of sections 11785, 11787 and 11788, or of any other statute, except such fees as are chargeable

to the county, ****."

We are of the opinion in construing the above section, that the Circuit Clerk is not permitted to charge or collect any fees from a county under the provisions of section as set forth above.

Yours very truly,

RUSSELL C. STONE
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

RCS/afj