

COUNTY DEPOSITORY:)
BOND-COUNTY DEPOSITORY:) Selection not in accordance with
Section 12184 et seq., R. S. 1929.

September 19, 1935.

FILED
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Hon. Chas. E. Budd
Presiding Judge
Cedar County
Eldorado Springs, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of September 6, 1935, in which you request the opinion of this Department on the facts stated therein. Your letter is as follows:

"I desire at this time to set forth certain facts and figures in behalf of our depository in Cedar County.

"The Sac River Valley Bank has always been the depository for our county money. They have been making a personal depository bond. Now then, Ora C. Gacy, County Collector, and his deputy are bonded by the United States Fidelity and Guaranty Company, and this bonding company is anxious that the depository bond be made. The Sac River Valley Bank is perfectly willing to handle these funds although they don't want to give a bond for it. The County Court realizes that we are responsible for this money. However, the Sac River Valley Bank is willing to make this bond if the County Court would pay the premium.

"We submitted to the Tri-County State Bank of El Dorado Springs, which is

in this county, a proposition of being depository for the county funds. We have a letter from them in which they state they are willing to make this depository bond with this one stipulation that all warrants drawn on the County Treasurer which are presented and payment refused, that they shall be entitled to draw the interest on these warrants and no other individual shall be entitled to draw interest on any warrant by reason of the fact that the individual who has a warrant can present said warrant to the Tri-County State Bank and collect their money. It has been the custom for a great many years for certain individuals in the county to buy these warrants, hold them, and draw the interest. In these cases, the bank would desire to pay out the money promptly on these warrants and they would hold them for interest. In this way they would be recompensed for securing the bond and handling the accounts.

"We feel like the County Court would like to have your opinion in this matter, and I sincerely trust that you will give this careful consideration and advise at an early date what steps you think would be necessary to take in order to safeguard and protect the funds of this county."

From your letter, as we understand it, you desire this Department to give you our opinion as to "what steps you think would be necessary to take in order to safeguard and protect the funds of this county."

The Legislature in its wisdom has set forth with particularity the manner of selecting county depositories

by the county courts. Briefly we will review the necessary steps to be taken in the selection of a county depository.

Under the provisions of Sections 12184, 12185, 12186 and 12187 of Article 9, Chapter 85, Revised Statutes of Missouri, 1929, a definite scheme and plan for the selection of county depositories is set forth, and under the provisions of these sections it is made the mandatory duty of the county court to select the depository or depositories in which the funds of the county shall be deposited.

Section 12184 makes it the duty of the county court of each county in this State, at the May Term thereof, in the year 1909, and each two years thereafter, to advertise for bids and receive proposals from banking corporations, associations, or individual bankers in such county as may desire to be selected as the depository of the funds of said county.

Section 12185 provides the procedure to be taken by the bidders for the county funds.

Section 12186 relates to the opening of bids and makes it the duty of the county court "to select as the depositories of all the public funds of every kind and description going into the hands of the county treasurer, and also all the public funds of every kind and description going into the hands of the ex officio collector in counties under township organization, the deposit of which is not otherwise provided for by law. * * *."

Section 12187 provides the kind and character of bonds to be given by the selected county depository and provides for the approval of same by the county court.

Section 12188 of said article and chapter sets forth specifically the manner in which the county funds shall be transferred to the selected county depositories.

Under the provisions of Section 12189, if for any reason the banking corporations, associations, or individual

bankers in any county shall fail or refuse to submit proposals to act as county depositories as provided in Section 12185, then, in that case, the county court shall have the power to deposit the funds of the county with any one or more of the banking corporations, associations, or individual bankers in the county or adjoining counties, and said section further provides the manner for the selection of same and the minimum rate of interest to be charged therefor, and the kind and character of bond or bonds to be given by said selected depositories.

So, it will be seen that the statutes have set forth in detail and with particularity the manner of the selection of a county depository and provide a definite way in which the county funds are to be protected and safeguarded.

We know of no other way that a county depository may be legally selected than in the manner provided in Article 9, Chapter 85, R. S. Mo. 1929, and amendments thereto.

Coming now to the plan submitted by the Tri-County State Bank of El Dorado Springs, as outlined in your letter, we do not find that the county court would have authority to enter into such a contract, as outlined in your letter, with the above bank, whereby the bank would make the depository bond to secure the county against loss and the county court in consideration of the bank giving such bond would stipulate that all warrants drawn on the county treasurer which are presented for payment and payment refused, the bank would be entitled to draw the interest on such warrants and no individual would be entitled to draw interest on any other warrant wherein payment was refused by the county. In other words, if we understand you correctly, it is that all warrants issued by the county court and when there is no money in the fund upon which it is drawn to pay said warrant, and said warrant is protested, the interest accruing on said warrant will be paid to the bank, and no one else other than the bank would have a right to purchase said warrants.

We do not think that it is within the power of the county court to say who shall be permitted to purchase protested

county warrants, nor within the power of the county court to compel the owner to sell same to the Tri-County State Bank of El Dorado Springs for the reason that the owner of said warrant, after it is protested, would have a right to assign same or hold same as they saw fit and the county would have no right to say that it would only pay interest on warrants purchased or cashed by the Tri-County State Bank.

Section 12169, R. S. No. 1929, provides for the issuance of county warrants. Section 12170 provides the same must be signed by the president of the court and attested by the clerk. Section 12171 provides as follows:

"No county treasurer in this state shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator; and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, and shall date and subscribe the same."

Section 12172 provides for the form of the assignment.

It will be seen that when there is no money in the county treasury to pay any warrant drawn on a particular fund and the warrant presented for payment by the person in whose favor it is drawn, or by his assignee, executor or administrator, the treasurer shall so certify on the back of the warrant and shall date and subscribe the same. This is what is commonly called "protesting the warrant," and same bears interest from the date of the treasurer's certificate. The warrant is delivered to and is the property of the person in whose favor it is drawn or his assignee, executor or administrator and is entitled to the interest thereon. He is not obligated to cash or sell same to a certain designated bank and may retain same and draw the interest himself.

Therefore, we do not believe that the county court would be authorized to enter into the contract with the bank selected as a county depository, under the terms and conditions as outlined in your letter. The county court could not control the owner of the warrant as to what he would do with

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same and if one person was entitled to draw interest on warrants all other persons in a similar situation would be entitled to draw interest thereon.

We realize that the past financial situation has created many vexatious and troublesome problems for the county officials in the protecting and safeguarding of the county funds, but we recognize that the situation has very definitely improved in the past two and one-half years.

We are, therefore, of the opinion that the county court in the selection of a legal county depository must be guided by Article 9, Chapter 85, R. S. No. 1929, and amendments thereto, and that the plan outlined in your letter would not be a selection under the provisions of the statutes.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

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