

COUNTY DEPOSITARY:
COUNTY COURTS:

1. County court should advertise for bids at May Term, in odd years, under Sec. 12184 R.S.1929.
 2. Question discussed in event no selection made by County Court under Sec. 12184 & 12189.R.S.129
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- February 23, 1935.



Hon. Ernest Jadwin,
Clerk of the County Court,
Shannon County,
Eminence, Missouri.

For Attention of: A. L. Deatherage,
Presiding Judge,

W. T. Galbraith,
R. N. Bradford,
District Judges,

of Shannon County
Court.

Dear Sir:

This is to acknowledge receipt of your letter of February 8, 1935, in which you request the opinion of this office on matters suggested therein; which letter is as follows:

"We, the undersigned, members of the Shannon County Court, desire to present for your consideration a statement of facts and to secure from you an opinion relative to the matter to which such facts relate:

The Shannon County Bank, at Eminence, county seat of Shannon county, was chosen as the depository of county such depository under restrictions. A bond for the safekeeping of such funds was given by the banking corporation. In December, 1934, the Finance Commissioner ordered the liquidation of the banks assets and the bank of course, ceased to function as county depository. Immediately thereafter the County Court entered of record an order instructing the County Treasurer to deposit county funds in the Winona Savings Bank, at Winona, Missouri, Shannon

"County, until further notice, but the court did not mention in its records requirement of a rate of interest to be paid nor is there any record of any bond being entered into by said bank as county depository. January 1st this year the undersigned entered upon their duties as members of the Shannon County Court, and at a term of court held in January advertised for bids for county depository, same to be submitted to us at our regular February session. At this session we were advised by the two banking institutions in this county that they would not submit bids, would enter into no bond and would pay no interest for the deposit of county funds, but would accept the deposit of same only as ordinary checking accounts are accepted from other depositors, nor has the court been successful in securing depository arrangements with banking institutions in adjoining counties as provided for by Section 12189, R. S. 1929. At the regular February term we entered on record an order rescinding the order of the preceding court which instructed the county treasurer to deposit the county funds in the Winona Savings Bank, since we can find no authority in law for such an arrangement, the questions we desire to propose are these:

Is there anything this Court can do except permit the County Treasurer to deposit the county funds where he chooses, relying upon the bond of the treasurer for the safe-keeping of said funds?

Since the advertisement for bids for a county depository was made prior to the regular February term of our court because the former depository was out of business, will it not be necessary for the court to again advertise for bids to be submitted at the regular May term, 1935, as required by Section 12184, R. S. 1929?

"In case we meet with the same result at the May, 1935, term, and no bids are received, shall the court again proceed without naming a county depository, leaving the matter of deposits entirely to the county treasurer?"

Since we can find nothing in the law covering the situation as it now faces us in regard to the selection of a depository when no bids are received, and when we cannot make an arrangement for the deposit of such funds under an agreement for the payment of the minimum rate of interest prescribed by Section 12189, we will greatly appreciate your early assistance in guiding us in the proper course of procedure in this matter."

I.

We note from your statement of facts that the county court of Shannon County had previously selected the Shannon County Bank as a county depository for the county funds and a bond given for the safekeeping of said funds: that in December, 1934, said Bank was ordered closed by the Commissioner of Finance and passed into his hands for liquidation; that thereafter the county court of that county entered of record an order instructing the county treasurer to deposit the county funds in the Winona Savings Bank, and according to your letter no rate of interest was required and no bond executed by the Winona Savings Bank as provided by law.

We also note that the new County Court after January 1, 1935, advertised for bids to be submitted at the regular February, 1935 Term of said court for the county funds; that no bids were received or accepted and no depository selected but that two banks indicated that they would accept the county funds as ordinary checking accounts.

You also state that the county court has not been successful in securing a county depository in the county or any adjoining county under the provisions of Section 12189, R. S. 1929; also that the county court rescinded the order of the old court that the county treasurer deposit the funds in the Winona Savings Bank.

Under the above circumstances you ask whether or not there is anything the county court can do except permit the county treasurer to deposit the county funds where he chooses, relying upon the bond of the county treasurer for safekeeping of said funds.

Since the county court has been unable to select a depository under the provisions of Sections 12184, 12185, 12186 and 12187, R. S. Mo. 1929, and has been unable to make arrangements for a depository with any banking corporation, association or individual banker under the provisions of Section 12189, the county treasurer being the custodian of the county funds in his possession it thereby becomes his duty to safeguard and protect said county funds in his hands without the aid of a duly selected depository.

Coming now to the question of the liability of the county treasurer on his official bond, in the event that no county depository is selected by the county court:

Section 12198, R. S. Mo. 1929, provides as follows:

"COUNTY TREASURER EXEMPT FROM LIABILITY,
WHEN.--The county treasurer shall not be responsible for any loss of the county funds through the negligence or failure of any depository, but nothing in this article shall release said treasurer from any loss resulting from any official misconduct on his part, or from responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him."

There are many cases in Missouri announcing the rule 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. We cite, as sustaining this rule of law, the following cases,

and many others could be cited:

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.

Of course, since the county court has been unable to select a depository according to law, and the county treasurer is the custodian of such funds and he and his sureties primarily liable for the safeguarding of same, it thereby devolves upon him, for the protection of himself and his sureties, to exercise his best judgment in safeguarding said funds and in selecting a place of deposit.

II.

We now come to the question of the county court advertising for bids for depositories of the funds of the county, before the May, 1935, Term of the County Court, and receiving proposals from banking corporations, associations or individual bankers in such county under the provisions of Section 12184 etc.

You ask, "Will it not be necessary for the county court to again advertise for bids at the regular May Term, 1935?"

It is our opinion that it is incumbent upon the county court to readvertise for bids at the May Term of court under the provisions of Section 12184 etc., and if for any reason no acceptable bids are made, then it becomes the duty of the county court to proceed under the provisions of Section 12189. The county court should strictly follow the provisions of these sections even though they might anticipate that no acceptable bids might be made under Section 12184 etc., or that no acceptable arrangements could be made under the provisions of Section 12189. After the county court has strictly followed the statutory requirements and in the event no depository has been selected, we will then be glad to give you an opinion as the situation then exists. The General Assembly, which is now in session, will no doubt have adjourned

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by that time and perhaps it will have enacted some legislation which will be helpful to solve just such situations as exist in your County.

We realize that the past financial and banking situation has created some vexatious problems for county officials in regard to the safeguarding of the county funds. But we recognize that the present situation is much better than it has been in the past and the banks, trust companies and banking associations are in a much better condition now and the situation in that respect has been very definitely relieved.

We shall be glad to cooperate with you in rendering such further assistance as we are able to give in this matter at a later date.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

CRH:EG