

- COUNTY DEPOSITORY. (1) Amount of bond to be fixed by County Court by method set out in statute - Section 12137, R. S. 1929.
- (2) Depository agreement submitted, not approved.

February 26, 1935.



Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Mr. Marr:

This is to acknowledge receipt of your letter of recent date with request for an opinion on matters contained therein; which letter is as follows:

"Morgan County has had disastrous results with County Depository Bonds signed by the directors of Banks, for County Funds. When the bank fails the directors are broke and the Depository Bond is not much good.

Section 12137 provides that instead of personal sureties on bonds the County may take U. S. or State of Missouri bonds. This plan is to be tried now.

The banks that share the County funds as county depositories wants to put up bonds. The only bone of contention is how much worth of bonds, and how shall the bonds be put up as security. The amount of deposit with the different banks varies from time to time. The banks may start out with \$15,000.00 then the amounts in time reduced to \$2,000.00. When the bank has only \$2,000.00 on deposit, the bank does not want to have up as security more than \$2,000.00 worth of government bonds.

"Herein is a contract that has been submitted by one of the banks. The bonds that are put up as security are coupon bonds. They are to be held by a correspondent bank in St. Louis, and the county to hold a depository receipt to show that bonds have been pledged to a bailee for the use and benefit of the county. When the deposit shrinks with the depository, then the government bonds are to be reduced proportionately. The county depository will keep the county funds on deposit with correspondent bank. The coupon bonds belong to the county depository but are pledged for the benefit of Morgan County. The interest on the bonds belongs to the county depository.

Section 12187 allows the county court to accept U. S. government bonds, and says the bonds may be 'deposited as the county court may direct.'

Is this contract legal, and is the county amply protected by its terms?"

I.

The questions asked in your letter call for the construction of Section 12187, R. S. Mo. 1929, of the County Depository Statutes, and particularly the underscored portion thereof, said section is as follows:

"Within ten days after the selection of depositaries, it shall be the duty of each successful bidder to execute a bond payable to the county, to be approved by the county court and filed in the office of the clerk thereof, with not less than five solvent sureties, who shall own unencumbered real estate in this state of as great value as the amount of said bond, or with a surety or trust company

"authorized by the laws of this state to execute bonds as surety: Provided, that the court may accept in lieu of real estate as security bonds of the United States or of the state of Missouri, which said bonds shall be deposited as the court may direct; the penalty of each depository's bond to be not less than such proportion of the total annual revenue of said county for the years for which such bond is given as the sum of the part or parts of the funds awarded to such bidder selected respectively bears to the whole number of said parts the amount of the bond to be fixed by the court, and said bond shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon said depository and for the payment upon presentation of all checks drawn upon said depository by the proper officers of said county or any township whenever any funds shall be in said depository, and that all interest will be paid promptly, and that all said funds shall be faithfully kept and accounted for according to law; and for a breach of said bond the county or any school district or township of said county or any person injured may maintain an action in the name of the county, to the use of the complainant."

Your question is, in the event that the designated depository pledges bonds of the United States instead of real estate security or corporate surety as provided in said section, "how much worth of bonds, and how shall the bonds be put up as security?"

The above proviso of Section 12137 has been construed by the Supreme Court in the case of Huntsville Trust Co. et al., v. Noel et al., 321 Mo. 749, 12 S. W. (2d) 751, and the court held in that case that this section authorized a bank which has been selected as a county depository to give, and the county

court to accept, bonds of the United States, under a pledge agreement conditioned for the faithful performance by the depository of all of its duties and obligations as such; and such selection having been made and such bonds having been deposited, that it constituted a valid pledge and was binding on the bank and the county was authorized to fore-close on the pledge for the breach of the conditions there-in contained.

As to the question of the amount of the bonds to be put up as security, we think that the question is answered by the statute itself, which says (Section 12187, supra):

"The penalty of each depository's bond to be not less than such proportion of the total annual revenue of said county for the years for which such bond is given as the sum of the part or parts of the funds awarded to such bidder selected respectively bears to the whole number of said parts the amount of the bond to be fixed by the court, *"

And this portion of the section of the statute applies as well where bonds of the United States or of the State of Missouri are deposited as well as where the depository bond is signed by solvent sureties or signed by surety or trust companies authorized to execute bonds as surety, and it provides the method as a guide to the county court to ascertain the amount of the bond to be fixed by the court. The court could not arbitrarily fix the amount of the bonds to be deposited as security but must be governed by the statute giving it the right to fix the amount of the bond. We do not think that the clause "deposited as the court may direct" refers to the amount of the bond, but refers to the conditions and terms of the pledge agreement.

In our opinion the court has the right to enter into a depository pledge agreement whereby the bonds may be deposited in escrow with some disinterested bank or trust company.

Feb. 26, 1935.

II.

We have examined the depository bond contract which you have submitted with your letter and it is our opinion that it does not comply with the provisions of Section 12187, supra, because we think that said depository pledge agreement should have the terms and conditions therein the same as the depository bond, that is, that it "shall be conditioned for the faithful performance of all of the duties and obligations devolving by law upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the proper officers of said county etc."

The depository bond contract submitted permits the foreclosure on the bonds only in the event of failure or closing of the bank and for no other breach of the bond, and it further provides that said bonds shall remain at all times the property of the first party.

For these and other reasons the pledge agreement, in our opinion, does not comply with the provisions of the statute and, therefore, should not be approved by you.

If there is anything further relative to this matter we shall be glad to cooperate with you and render such service as we are able to render, looking to the preservation and security of the county funds.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTERICK
Attorney-General

CRH:EG