

COUNTY DEPOSITORY:

Deposits made by a county in non-compliance of County Depository Law, Section 12184-85-86-87, creates preferred claim in favor of county in case of failure of bank.

7/8  
July 6, 1935.



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

Dear Mr. Marr:

This is to acknowledge receipt of your letter of July 2, 1935, with request for the opinion of this Department on the questions therein submitted; which letter is as follows:

"The bi-annual period for the selection of county depositories will expire July 9th, 1935. In conformity with section 12184-1929, the county court through the county clerk, advertised for bids. The three remaining banks in the county did not submit any bids for any of the county funds. The county treasurer deposits the county funds, just like he always does. The banks accept the money, proportionate the amounts by instructions to the county treasurer as they did in 1933, and they are paying 1 1/2% on the daily balance as usual. My understanding is that they will so continue to do after the 65 days for selection a new depository July 9th, 1935.

By some kind of an agreement, the banks did not make bids for the funds as county depositories because, they reason that the county will keep the money on deposit, and the county will then become a general depositor, because the plain relationship of a debtor and creditor will arise. They will enjoy the use of the money, without having to put up a bond.

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"My question is, if one of these banks does become insolvent, and does close its doors, does the County of Morgan have a right to a preference against the assets of any of these institutions that might close? The county depository law as set in sections 12184-12198 of the statutes have not been complied with in any way.

"If 51 S. W. (2) 1025, is the law of Missouri and does apply to counties, then Morgan County is entitled to a preference. Please get me out an opinion as soon as possible, so that the County Court can have some information."

The question is, as we interpret your letter: In the event that no selection of a county depository is made by the county court in the manner provided by law and the county's money is deposited in banks, not in the statutory manner, will the county, in the event of the failure of such bank or banks, have a preferred claim against the bank?

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 depositaries 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.

If for any reason the county court has not followed the statutory method in the selection of the depository or the depository has failed to execute bonds in the manner provided by the statute and the money is deposited in a bank without meeting these statutory requirements, the depository is not the lawful custodian of the funds. And, in that event, the relationship of debtor and creditor does not arise and the funds are considered trust funds and in the event of the failure of the depository the county has a preferred claim against

the bank. This rule is so firmly fixed in Missouri that we deem it necessary to quote from one case only on the subject, to-wit, Ralls County v. Commissioner of Finance, 66 S. W. (2d) 115, 1. c. 116:

"A county has no lawful right to deposit county funds except in a county depository. It is the settled law of this state that, where county funds are deposited in a bank which has not been selected and qualified as a depository of county funds in accordance with the provisions of article 9, c. 85, R. S. Mo. 1929, to which we have called attention, the title to the fund so deposited does not pass to the bank, but such fund in the hands of the bank is a trust fund, and, in event of subsequent failure of the bank, the county would be entitled to a preference. *Huntsville Trust Company v. Noel*, 321 Mo. 749, 12 S. W. (2d) 751; *White v. Greenlee*, 330 Mo. 135, 49 S. W. (2d) 132; *School District of Cameron v. Cameron Trust Company*, 330 Mo. 1070, 51 S. W. (2d) 1025."

As was stated in this case, many other cases to the same effect could be cited sustaining this rule of law.

County courts should make every effort to follow strictly the statutes in the selection of depositories and require the selected depositories to comply with the statutes relative to the giving of bond or bonds to safeguard the county's funds.

Coming now to the question asked in your letter, and based on the assumption as stated therein, that "the county depository law as set out in Sections 12184-12198 of the 1929 statutes have not been complied with in any way," such being the case, it is our opinion, based on the rulings of our Supreme

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Court, that, if the county funds are deposited in a depository and there has been a non-compliance with the statute in the selection thereof, the county would have a preference for such deposits in the event of the failure of the depository.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

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

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