

COUNTY TREASURER'S BOND: County Court may not "reduce" bond by court order.

6-26
June 25, 1935.



Hon. James H. Pettijohn
Prosecuting Attorney
Holt County
Oregon, Missouri

Dear Sir:

We are in receipt of your request for an opinion of this office on the following matter:

"County Court of Holt County desires to reduce the County Treasurer's Bond from a Hundred Thousand Dollars (\$100,000) to Eighty-Thousand Dollars (\$80,000). They feel that they are warranted in making this reduction. In fact, I understand that the court has already made an order reducing the Bond, but the Insurance Company in which the Treasurer has her bond, says that they have taken this matter up with the Attorney and that they are of the opinion that a County Court has no authority to reduce the Treasurer's Bond during her term."

I.

COUNTY COURT MAY NOT "REDUCE"
BOND OF COUNTY TREASURER.

We presume that the bond you have reference to is that which is required of the County Collector to protect the general revenue fund of the county while in his hands. This bond is required by the provisions of Section 12133 R. S. Missouri

1929. The 57th General Assembly repealed and reenacted this Section, Laws of Missouri 1933, page 338, but this office has heretofore held in an opinion to Elvin S. Douglas, dated May 17, 1935, that the reenacted Sections 12133 and 12134 are not effective until January 1, 1937, and that Section 12133 R. S. Missouri 1929, is presently effective. This section reads as follows:

"The person elected or appointed county treasurer under the provisions of this article shall, within ten days after his election or appointment as such, enter into bond to the county in a sum not less than twenty thousand dollars, to be fixed by the county court, and with such sureties, resident landholders of the county, as shall be approved by such court, conditioned for the faithful performance of the duties of his office."

The bond supplied by virtue of the foregoing may not be less than Twenty Thousand Dollars, but may be any sum in excess thereof which is in good faith fixed by the County Court as being the sum sufficient to protect the County from loss because of the failure of the Treasurer to properly perform his duty. The statute places a wide discretion in the County Court in the fixing of this bond. However, once the amount is fixed and the bond entered into by the principal and sureties and filed and approved by the County Court, it fixes the liabilities of the parties thereto. A bond is nothing more than a special contract, 9 C. J. 7:

"In a technical sense a bond is an obligation in writing and under seal binding the obligor to pay a sum of money to the obligee, usually with a clause to the effect that on the performance of a certain condition the obligation shall be void."

and is to be construed as other contracts, 9 C. J. 31, Sec. 49:

"A bond or obligation is a deed at common law and is also regarded as a contract, and is to be construed like other contracts according to the fair import of the language used."

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It is recognized that contracts may only be modified or changed by the mutual consent of the parties. 13 Corpus Juris 589:

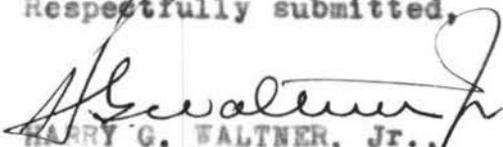
"Parties to an unperformed contract may, by mutual consent, modify it by altering, exercising or adding provisions" * * *

When the surety company executed the bond as surety for your county collector and the bond was delivered to the county court, a contract was entered into which could only be modified and changed with the consent of the surety. From your request it is apparent that the surety has refused to consent to the modification of the contract.

CONCLUSION.

It is therefore the opinion of this office that the County Court may not, merely by its order of record, reduce the amount of the County Collector's bond.

Respectfully submitted,


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APPROVED:

JOHN W. HOFFMAN, Jr.,
Acting Attorney General.

HGW:MM