

COUNTY TREASURER:

DEPOSITARY OF COUNTY  
FUNDS:

) Liability of County Treasurer on official  
) bond, where no depositary bond is given.

February 12, 1936.



Senator Geo. D. Clayton, Jr.,  
Hannibal,  
Missouri.

Dear Senator Clayton:

This is to acknowledge receipt of your letter of February 7, 1936, in which you request an opinion from this Department on questions submitted in your letter of that date, a copy of which is as follows:

"Is the County Treasurer liable for any loss of the County funds through the negligence or failure of any depositary, provided that the depositary has been selected by the County Court?"

"I would also like to know if the treasurer would be liable under his bond in the event that the County Court designated a depositary, and the depositary did not furnish a bond and subsequently failed."

We shall answer your two questions in the order submitted in your letter.

I.

Under the provisions of Sections 12184-12198, Article 9, Chapter 85, Revised Statutes of Missouri, 1929, a definite scheme and plan for the selection of county depositaries is set forth, and under the provisions of these sections it is made

the duty of the county court to select the depository, or depositaries, in which the funds of the county shall be deposited.

Section 12198, R. S. Mo. 1929, of said Article 9, supra, provides as follows:

"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."

The Supreme Court said in the case of Glaze v. Shumard, 54 S. W. (2d) 726, l. c. 728, as follows:

"It is well settled that a public officer is an insurer of public funds which he has lawfully received, unless the legislature has provided otherwise."

Therefore, under the provisions of Section 12198, supra, the county treasurer shall not be responsible for any loss of the county funds through the negligence or failure of any depository, which necessarily means a depository lawfully selected in accordance with the statutes in such cases made and provided.

It is, therefore, our opinion that, if a county depository was duly and regularly selected and bond given and accepted in accordance with Article 9, Chapter 85, R. S. Mo. 1929, and amendments thereto, the county treasurer would not be responsible for any loss of the county funds through the negligence or failure of any depository.

## II.

We come now to the second question asked in your letter of request, that is, whether the county treasurer would be liable under his bond in the event that the county court designated a depository and the depository did not furnish a bond and subsequently failed.

The Supreme Court in the case of *City of Fayette v. Silvey*, 290 S. W. 1019, 1. c. 1021, said the following:

"\* \* \* The general rule, which is the rule in this state, is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession. *Shelton v. State*, 53 Ind. 331, 21 Am. Rep. 197; *Thomssen v. County*, 63 Neb. 777, 89 N. W. 389, 57 L. R. A. 303. He is therefore liable for losses which occur even without his fault. *Shelton v. State*, supra. This standard of liability is bottomed on public policy. *University City v. Schall*, 275 Mo. 667, 205 S. W. 631.

"In the last case cited, our Supreme Court, speaking through Blair, P. J., applied this general rule to a city treasurer, into whose hands the general funds of the city had passed, finding that the mayor and aldermen had directed the funds placed to the credit of the city treasurer in a certain trust company, which later failed. The treasurer died, and the suit was instituted against the administrator of his estate. The estate was held liable under the general bond, notwithstanding

the fact that the funds had been so deposited in the trust company at the direction of the board of aldermen."

In the case of Bragg City Special Road District v. Johnson, 20 S. W. (2d) 22, l. c. 24, 66 A. L. R. 1053, the Missouri Supreme Court in this leading case said:

"The ruling in the University City Case was made in recognition of the rule followed in this State, and generally followed that the liability of the treasurer of a public corporation for its funds coming into his hands is absolute. State ex rel. v. Powell, 67 Mo. 395; 29 Am. Rep. 512; State ex rel. v. Moore 74 Mo. 413; 41 Am. Rep. 322; County of Mecklenburg v. Beales, 111 Va. 691, 69 S. E. 1032, L. R. A., (N. S.) 285. The rule is one founded upon considerations of public policy."

In the case of Everton Special Road District v. Bank of Everton, 55 S. W. 335, l. c. 336, the Supreme Court of Missouri stated:

"In selecting a county depository the steps may be all regular up to the execution of a bond by the depository and then if the bond given does not substantially comply with the requirements of the statute, the depository selected is not the legal depository."

In the case of Huntsville Trust Company v. Noel, 12 S. W. (2d) 751, l. c. 754, the Supreme Court of Missouri said:

"As heretofore stated, all county funds are required by law to be deposited in a county depository. The officers of the county charged with duties relating to the deposit of such funds for safe keeping are agents of limited powers, and as such they have no authority to

deposit these public moneys with any other than a county depository. Now a bank or trust company does not become a county depository merely by being designated as such in an order of the county court; it must qualify as a depository by giving the security prescribed by section 9585."

The Springfield Court of Appeals followed the Huntsville Trust Company case in the case of Consolidated School District v. Citizens Savings Bank, 21 S. W. (2d) 1. c. 788, and the Huntsville case is cited with approval in the case of White, County Treasurer, v. Greenlee, 49 S. W. (2d) 132.

Also, in the case of Boone County v. Cantley, Commissioner, 51 S. W. (2d) 56 1. c. 58, the Supreme Court further said:

"A bank which has given a bond that does not comply with the provisions of Section 12187 R. S. 1929, regardless of the action taken by the county court with respect to it, is not a county depository either in law or in fact. And upon the receipt of county funds by such a bank, under color of being a county depository, a trust as to funds so deposited arises in favor of the county. Huntsville Trust Co., v. Noel, 321 Mo. 749 1. c. 757; 12 S. W. (2d) 751."

From the above and foregoing cases we find that a bank or trust company does not become a county depository merely by being designated as such in an order of the county court. It must qualify as a depository by giving the security prescribed by Section 12187, R. S. Mo. 1929, and amendments thereto, and where the statutory procedure in the selection of a county depository has not been followed, by the giving

of the bond and the approval by the court, the bank in question is not the legal depository of said county.

It is, therefore, the opinion of this Department that a county treasurer, depositing the county funds in a bank that has been designated as a county depository but has not given the depository bond as required by the statute, does so at his peril, and, in the event of the failure of said bank and the loss of the county funds thereby, he and his sureties become liable on his official bond.

Yours very truly,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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