

COUNTY TREASURER: County Court may pay for surety bond if Treasurer elects to give same and Court consents thereto.  
BONDS: Treasurer must give separate bonds for school moneys and county funds in statutory amounts.

October 5, 1937

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Honorable Alvin H. Juergensmeyer  
Prosecuting Attorney  
Warren County  
Warrenton, Missouri

Dear Sir:

This is to acknowledge your letter of September 29, 1937, in which you request the opinion of this Department on the questions therein. Your letter is as follows:

"Under the 1937 law is the County Court required to pay the premium on the bond for the County Treasurer?"

What would be considered a just reason for the Court refusing to pay the premium on the bond,

Missouri law requires that the Treasurer shall give a bond for twice the amount of the school funds on hand, and the amount set for the County Treasurer bond is not less than \$20,000. For illustration, the County has \$40,000 in its school fund and \$50,000 in the county fund. Would it be necessary for the Treasurer to give an \$80,000 school bond and a \$50,000 county bond or could the Treasurer give a \$30,000 school bond and \$30,000 county treasurer bond, the two bonds totalling \$60,000 and being in excess of the amount of either the school fund or the county fund?"

## I.

In the first paragraph of your letter you desire to know whether or not, in our opinion, the county court is required to pay the premium on the bond for the county treasurer.

You, no doubt, refer to the bond of the county treasurer for the treasurers recently appointed by the Governor in counties under 40,000 inhabitants and not under township organization, and in counties having a population of 75,000 inhabitants and not more than 90,000 inhabitants, under the provisions of the statutes enacted by the 59th General Assembly, and found at pages 424 et seq., Laws of Missouri, 1937. At the same session of the General Assembly, House Bill 125, found at page 190, Laws of Missouri, 1937, was enacted, which provides in part as follows:

"Whenever any officer of this state\*\*\* or any officer of any county of this state\*\*\*shall be required by law of this state\*\*\*\*to enter into any official bond, or other bond, he may elect, with the consent and approval of the governing body of such state, department, board, bureau, commission, official, county, \*\*\* or other political subdivision, to enter into a surety bond, or bonds, with a surety company or surety companies, authorized to do business in the State of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

" All laws in conflict with the provisions of this act are hereby repealed, insofar as such laws are in conflict with the provisions of this act."

We think that under the provisions of the above statute that if a county treasurer or other officer mentioned in this statute elects to enter into a surety bond or bonds as permitted under the provisions of this section and same is with the consent and approval of the governing body, which in this case would be

the county court, then in that event the county court would be required to pay the premium on such surety bond. In other words, if the officer elects to give a surety bond he must have the consent of the governing body to give such bond, then it is incumbent on the governing body to pay the premium on same. Conversely, if the governing body does not consent to the officer giving a surety bond it is not required to pay the premium.

We are not unmindful of the provisions of Section 12133 R.S. Missouri 1937, page 426, but it is our opinion that the County Court may waive the provisions of this section requiring a personal bond, and permit the officer to give a surety bond.

## II.

With reference to the question asked in the third paragraph of your letter, as to the amount of bond to be given by the county treasurer to safeguard and protect the county funds and the school funds in his hands, we refer to the applicable sections of the statutes.

Under the provisions of Section 12133, Laws of Missouri, 1937, page 426, which is a reenactment of a section of the same number, Laws of Missouri, 1929, it provides that the county treasurer shall within ten days after his election or appointment enter into a bond with the county in a sum not less than \$20,000.00 to be fixed by the county court, and with such sureties, resident landowners of the county, as shall be approved by such court, conditioned for the faithful performance of the duties of his office.

Section 12134 provides that the county court, at any semi-annual settlement with such treasurer, or at any other time, may, if his bond be deemed insufficient, order him to give a new bond or additional security.

By the provisions of Section 9266 R. S. Mo. 1929, the county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, except in counties having a township organization, and said section requires, "he shall give a separate bond, with sufficient security, double the amount of school moneys that shall come into

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his hands, payable to the State of Missouri, to be approved by the county court, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands;\* \* \*"

It will be noted that it is necessary for the county treasurer to give a separate bond as custodian for the school moneys in double the probable amount of school moneys that shall come into his hands. The county court in fixing the amount of bond required to be given by the county treasurer must follow the provisions of these two sections of the statute! In the first instance to secure the county funds a bond of not less than \$20,000.00; and to secure the school funds, a bond in not less than double the probable amount of school moneys coming into his hands. The county court is not permitted to follow the plan suggested in your letter and permit the treasurer to give a bond to secure the school funds for less than the amount required under the statutes and attempt to meet the statutory requirements by increasing the bond to secure the county funds. In other words, the county court is not permitted to lump the two required bonds together and average same up.

We think we have answered the questions asked in your letter.

Respectfully submitted,

COVELL R. HEWITT,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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