

DEPOSITORIES:)
COUNTY DEPOSITORY:)
BANKS & BANKING:)

Duty of County Court to select county depositories which will pledge its securities to protect the county funds.
County Court should select depositories outside county if none in county will pledge assets.

December 6, 1937.

12-8

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Honorable Alfred F. Moeller
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri

Dear Sir:

We have received your request for an opinion dated November 27th, which is as follows:

"The County Court of Ste. Genevieve County has designated two Ste. Genevieve banks as county depositories. These banks have failed to make the deposit of securities as required by section 1 Laws of Missouri 1937 page 502. Please give me your opinion as to whether the provisions of section 4 Laws of Missouri 1937 page 504 make it mandatory for the County Court to deposit the county funds in a banking institution outside the county."

The General Assembly of 1937 materially changed the depository laws of the State of Missouri with reference to the payment of interest and the securities to be given by the banking institutions selected as depositories to safeguard and protect the public funds of the State, its various institutions and the political sub-divisions of the State.

Laws of Missouri, 1937, page 502, Section 1 thereof, provides in part as follows:

"Notwithstanding any provisions of law of this State or of any political sub-division thereof, the public funds of

every county * * * * *
which shall now or hereafter be deposited in any banking institution acting as a legal depository of such funds under the provisions of the statutes of Missouri requiring the letting and deposit of the same and the furnishing of security therefor, shall be secured by the said legal depository making deposit, as hereinafter provided, of securities of the same character as are required by Section 11469 and all amendments thereto for the security of funds deposited by the State Treasurer under the provisions of Article 1 and 2 of Chapter 72 of the Revised Statutes of Missouri, 1929, and all amendments thereto. * * * * *

Said section further provides how the securities so pledged shall be deposited with a fiscal officer or the governing body of the municipal corporation or other depositor of said funds or deposited with the trustee as may be satisfactory to both parties.

Section 2 of said Act provides:

"The value of the securities deposited and maintained by a legal depository under the foregoing section, shall at all times be not less than one hundred per cent of the actual amount of the funds on deposit with said depository, less \$5000.00 where the depository is insured by the Federal Deposit Insurance Corporation."

Section 3 provides that it is not necessary to advertise for bids when interest is not paid on demand public funds, as is the case at the present time.

Section 4 of said Act further provides:

"In the event that there shall be no banking corporation, association, trust company or individual banker in the territory within which the depository or depositories of any public fund must, under the applicable laws of this state, be located to become eligible for selection, or in the event that the selected

depository or depositories within such territory shall fail to accept such award or awards of such public funds as may be made, then the authority or authorities which are by law empowered to make such selection of depositories and awards of public funds thereto, are authorized and empowered to select as depository or depositories such banking institutions located outside the territorial limits aforesaid as such authority or authorities may deem the safest and most convenient depository or depositories for such public fund."

(Underscoring ours.)

It will be noted in Section 1 that the public funds of the county "shall be secured by the said legal depository making deposit of securities of the same character as are required by Section 11469 and all amendments thereto for the security of funds deposited by the State Treasurer etc."

Upon an examination of Section 11469, as amended by Laws of Missouri, 1937, page 521, we find that the statute is specific as to the class and character of securities that may be pledged by the selected depositories to safeguard and protect the State public funds. And the county funds should be protected by the same class and character of securities as the State funds are secured. And Section 2 is specific that securities to the value of not less than one hundred per cent shall be pledged by the legal depository selected, less \$5000.00 if the depository is insured by the Federal Deposit Insurance Corporation.

It will be seen from a reading of the above sections that the law contemplates that at all times the public funds shall be secured in the specific and particular manner as therein set out. The policy of this State has been at all times that its public funds deposited in the selected depositories shall be protected by personal bonds or the pledging of assets.

In your letter of request you state that the County Court of Ste. Genevieve County has designated two Ste. Genevieve banks as county depositories and that they have failed to comply with the statutes relative to the pledging of securities to safeguard and protect the county's deposits, and your question is, as we understand it, whether it is the duty of the county court, under the above conditions, to select a depository or depositories located outside the territorial limits of Ste. Genevieve County, which are willing and able to comply with the statutes relative to the pledging of securities.

It must be remembered that under the present State and Federal laws and regulations it is unlawful for banking institutions to pay interest on public demand deposits. The State Legislature in consideration of this and other reasons has required that the depositories selected by the governing authorities shall be secured by the pledging of the highest quality of securities.

From a reading of the 1937 Depository Act, and keeping in mind the public policy of this State relative to the securing of public funds and the cardinal principle running through all of our depository statutes, that of protection for the public funds, we are driven to the conclusion that it is the duty of the county court, which is the governing authority in the selection of the depositories for the county funds, to select same in the statutory manner, that is, by requiring the selected depositories to pledge the securities in the manner and form as required by Section 11469, as amended by Laws of Missouri, 1937, at page 521, as the State funds are secured.

It is, therefore, our opinion that the county court has no authority to select county depositories and waive the requirements of the statute relative to the pledging of securities to safeguard and protect the county funds when it is authorized and empowered to select depositories outside the territorial limits of the counties which are able and willing

Hon. Alfred P. Moeller

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to comply with the statutory mandate of the pledging of securities to protect the county funds.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General.

CRH:EG