

COUNTY DEPOSITARIES:

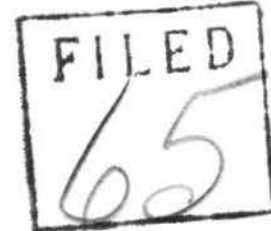
Length of time funds may be held  
under Section 12188, R. S. Missouri,  
1929.

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June 17, 1937

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Hon. F. E. Murrell,  
Prosecuting Attorney,  
Schuyler County,  
Lancaster, Missouri.



Dear Mr. Murrell:

We wish to acknowledge your request for an opinion  
under date of June 8th, wherein you state as follows:

"I would like an early opinion from  
your office as to the construction you  
place on Section 12188 R. S. 1929,  
especially the first part thereof which  
reads as follows:

'As soon as such bonds shall have  
been given and approved, the court  
shall make an order designating such  
successful bidders as depositaries  
of said funds UNTIL SIXTY FIVE DAYS  
AFTER THE TIME FIXED BY THIS ARTICLE  
FOR ANOTHER SELECTION;" etc.

"Our county court advertised as provided  
by law for a county depositary, bids re-  
ceived, etc. Bonds given and approved by  
the Court. The Court has made an order  
designating the successful bidders as  
depositaries.

"Now the question arises regarding the  
transferring of the funds by the County  
Treasurer, as to when he must do so in  
order to protect his bond, etc.

"How long can the old depositaries withhold  
the funds after the county court has ap-

proved the bonds and made an order designating the successful bidders as depositaries?

"Can the old depositaries hold the funds they may have for a period of 65 days after the approval of the bond and the order of court designating the new depositaries? What is the meaning of this 65 day provision?

"How long has the County Treasurer after the order approving the bond and making the order designating the depositaries by the County Court has he to make the transfer of any funds from old depositary to the newly designated one?"

Section 12184, R. S. Mo. 1929, makes it the duty of the county court, at the May term in every odd year, to receive proposals from banks desiring to be selected as depositaries of the funds of the county, as follows:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositaries of the funds of said county."

Section 12185, R. S. Mo. 1929, provides that such banks in the county as desire to bid shall deliver to the clerk of the court on or before the first day of the term a proposal setting out the rate of interest that the bank offers to pay the county, in part, as follows:

"Any banking corporation, association or individual banker in said county desiring to bid shall deliver to the clerk of said court, on or before the

first day of the term of said court at which the selection of depositaries is to be made, a sealed proposal, stating the rate of interest that said banking corporation, association or individual banker offers to pay on the funds of the county \* \* \*."

Section 12186, R. S. Mo. 1929, makes it the duty of the county court, at noon on the first day of the May term in every odd year, to open the bids and select depositaries of public funds, in part, as follows:

"It shall be the duty of the county court, at noon on the first day of the May term in 1915, and every two years thereafter, to publicly open said bids, and cause each bid to be entered upon the records of the court, and 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, the banking corporations, associations or individual bankers whose bids respectively made for one or more of said parts of said funds shall in the aggregate constitute the largest offer for the payment of interest per annum for said funds: \* \* \*."

Section 12188, R. S. Mo. 1929, provides that the order designating the successful bidder as depositary be for a term beginning from noon on the first day of the May term in every odd year, the date fixed for the selection of depositaries, plus sixty-five days, and further that immediately upon the making of the order the county treasurer shall transfer the funds to the successful bidder, as follows:

"As soon as such bonds shall have been approved, the court shall make an order designating such successful bidders as depositaries of said funds until sixty-five days after the time fixed by this article for another selection; and thereupon it shall be the duty of the county treasurer, and of the ex-officio collector if the county be under township organization, immediately upon the making of said order, to transfer to said depositaries the part or parts of all said funds respectively let to such depositaries under such selection, and immediately upon the receipt of any money thereafter to deposit the same with the said depositaries to the credit of the county, and the said treasurer shall, as nearly as may be, maintain with each of the depositaries so selected its due and proportionate share of the total of the funds let; and for any failure of the county treasurer to make transfer of such funds or to deposit all of said funds with said depositaries, whether the same shall come into his hands as treasurer or as ex officio collector of the revenue, or otherwise, he shall be liable to said depositaries, respectively, for ten per cent per month, during such failure, upon the respective part or parts of said funds not so deposited, to be recovered by civil action in any court of competent jurisdiction: \* \* \*."

The above section declares in one breath that the old depositary may hold the funds it has for a period of sixty-five days after the approval of the bond and the order of the court designating the new depositary, and in another breath declares that immediately upon the making of the order the county treasurer shall transfer the funds to the new depositary. This, however, as we view it, has reference only to the original selection made under the statute, that is, when the first order

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was made by the county court selecting the successful depository, it was immediately the duty of the county treasurer to transfer the funds to the said successful depository.

From the foregoing, we are of the opinion that the depository is selected for a definite and fixed period of time, extending sixty-five days after the first day of the May Term of the county court in the odd numbered years. The next selection thereafter is made two years hence, but the newly selected depository does not receive the funds until the termination of the previous selection, which is sixty-five days after the first day of the May Term of court.

Respectfully submitted,

MAX WASSERMAN,  
Assistant Attorney General.

APPROVED:

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

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