

COLLECTOR: Deputies may not be reimbursed for costs expended in procuring bond to protect collector, under provisions of Section 1, Laws of Missouri, 1937, page 190.

December 21, 1938

Hon. F.T. Jared
Associate Judge
County of Greene
Springfield, Missouri



Dear Judge:

This is to acknowledge receipt of your request for an opinion reading as follows:

"When our County Collector gave bond one year ago, he required that one of his deputies give bond, which he did and paid for. Now he presents (the deputy) a statement to the County Court asking that the court refund him the amount (\$50) which he paid for the \$10,000 bond made to the Collector at that time, claiming under Sec. 1, P. 190 Session Acts 1937.

"It appears to me that that paragraph in this section which says, 'Shall be required by law of this state, or by charter, ordinance or resolution, or by any order of any court of this state, to enter into any official bond and ect. would not allow bond to any one to be paid for but of public funds, unless the law, ordinance or court order required that such one was required to give bond. We felt that the state and county are fully protected in the bond given by the principal, the collector, which bond is required by law. Are we right in this contention? If the bonding company making collector's bond would require of the collector that he have certain of his deputies bonded, would that have any bearing in the case?"

Attention is directed to Section 1, Laws of Missouri, 1937, at page 190, which provides in part as follows:

"Whenever * * * * * any officer of any county of this state, or any deputy, appointee, agent or employee of any such officer * * * * * shall be required by law of this State, or by charter, ordinance or resolution, or by any order of any court in 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, city, town, village, 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."

You will notice from the above quoted section of the statute that if any officer or deputy shall be required by law of this state to enter into official bond or other bond, he may elect, with those designated, to enter into a surety bond, the cost of which shall be borne by the public body protected. As we construe this section of the statute, it is believed that unless the law of this state requires a bond, or a bond being required as set out in the statute to be given, that the costs cannot be borne by the public body protected.

We have made a diligent search to ascertain whether a deputy collector is required by law to enter into any bond and have found no such law. We have assumed, however, that the county court has made no such order requiring the bond. In that event, the statute above quoted, would apply.

The only section we have found which might bear on this subject under consideration is Section 9896, R.S. Missouri, 1929, which reads as follows:

"Collectors may appoint deputies, by an instrument in writing, duly signed, and may also revoke any such appointment at their pleasure, and may require bonds or other securities from such deputies to secure themselves; and each such deputy shall have like authority, in every respect, to collect the taxes levied or assessed within the portion of the county, town, district or city assigned to him, which, by this chapter, is vested in the collector himself; but each collector shall, in every respect, be responsible to the state, county, towns, cities, districts and individuals, companies, corporations, as the case may be, for all moneys collected, and for every act done by any of his deputies whilst acting as such, and for any omission of duty of such deputy. Any bond or security taken from a deputy by a collector, pursuant to this chapter, shall be available to such collector, his representatives and sureties, to indemnify them for any loss or damage accruing from any act of such deputy."

This section, you will have noticed, was only enacted for the purpose of indemnifying the collector in the event of default by one of his deputies, so as to obviate any loss which the collector may suffer. You will have further observed that it is discretionary with the collector as to whether or not such a bond is to be given. In this instance, the collector has exercised such discretion permitted under the statute by requiring a bond of his deputy. Therefore, since the county court has made no order requiring bond and the law imposes no requirement as to a bond, then it follows that a deputy collector of revenue may not be reimbursed for the costs of such bond obtained under the provisions of Section 1, supra. This is because the bond given was only made for the purpose of protecting the collector and not for the purpose of protecting a public body. Had the county court made an order requiring such a bond be given in order to protect the county, probably the county deputy collector would be entitled to be reimbursed for the costs of such bond.

CONCLUSION

It is the opinion of this department that a deputy collector may not be reimbursed out of public funds for costs of bond given to indemnify or protect the collector when such a bond is not required by law and the county court has made no order requiring such bond.

Respectfully submitted,

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APPROVED By:

(Acting) Attorney General

RCS:VAC