

**BONDS:**  
**SURETY BONDS:**  
**COLLECTORS' BONDS:**  
**OFFICERS:**

1. Payment of premium of surety bond not mandatory on public body.
2. Premium to be paid out of Class 4.
3. Entire premium to be paid for by county and not apportioned among the funds protected.

April 4, 1939

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Honorable W. J. Melton  
Presiding Judge of the  
County Court  
Charleston, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion which reads as follows:

"E. G. Gilmore, County Collector, Mississippi County, put an item of \$450.00 in his yearly budget for the year of 1938, this amount being the amount due as premium on his Surety Bond.

"The County Court cut this amount off his budget because we felt he should pay the premium himself and later we found that section #1, page 190 of the 1937 Session Act states that if he gives a Surety Bond it is the duty of the county court, as the protected body to pay this premium. Will we have to pay for this 1938 bond? If so what class should it be paid from and as road and bridge, school, and county court drainage districts are all protected under this bond. Will the entire premium be paid out of county revenue, or should we take some from school districts and drainage districts?"

The questions presented by your request are as follows:

1. If the collector "elects" to enter into a surety bond, is the "consent and approval" of the county court mandatory and the county thereby becomes liable for the premium?

2. From what class of the county budget should the premium on the surety bond be paid?

3. In a collector's bond, is the cost to be paid by the county, or should it be apportioned among the various political subdivisions for whom the collector collects taxes?

Laws of Missouri, 1937, page 190, section 1, provides as follows:

"Whenever any officer of this state or of any department, board, bureau or commission of this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any county of this state, or any deputy, appointee, agent or employee of any such officer, or any officer of any incorporated city, town, or village in this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any department, bureau or commission of any county, city, town or village, or any deputy, appointee, agent or employee of any such officer; or any officer of any district, or other subdivision of any county, or any incorporated city, town or village, 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."

Laws of Missouri, 1935, page 409, section 9885, provides as follows:

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"Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent, of said amount: Provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. The official bond required by this section shall be signed by at least five solvent sureties. Provided, that in all counties which now have or which may hereafter have a population of less than 75,000 inhabitants, according to the last preceding federal decennial census, the county court in such counties may require the county collector thereof to deposit daily all

collections of money in such depository or depositories as may have been selected by such County Court in accordance with the provisions of Sections 12184, 12185, 12186 and 12187 of the Revised Statutes of the State of Missouri 1929, to the credit of a fund to be known as 'County Collector's Fund,' and such depository or depositories shall be bound to account for the moneys in such 'County collector's Fund' in the same manner as the public funds of every kind and description going into the hands of the county treasurer and under the same depository bond as required to be given under section 12187 Revised Statutes of Missouri 1929; provided further, that when such deposits are so required to be made, such county courts may also require that the bond of the county collector in such counties shall be in a sum equal to the largest collections made during any calendar week of the year immediately preceding his election or appointment, plus ten per cent of said amount; provided further, that no such county collector shall be required to make daily deposits for such days when his collections do not total at least the sum of One Hundred Dollars (\$100.00); and provided further the collector shall not check on such 'County Collector's Fund' except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositories."

I.

In 1937 the 59th General Assembly enacted a law which allows an officer "with the consent and approval of the governing body" to enter into a surety bond and the

cost of such bond to be paid by the public body protected thereby. It is a matter of common knowledge that prior to the enactment of this statute many county officials gave personal bonds, the cost of surety bonds being almost prohibitive in view of the compensation received by such officers. However, the Legislature wishing to protect and safeguard public moneys in a safer and more secure fashion, provided that with the consent and approval of the governing body that surety bonds paid for by the public body protected could be given.

Prior to 1937, surety companies were authorized by Section 2851, R. S. Mo. 1929, to "become and be accepted as surety on the bond recognizance or other writing obligatory of any person or corporation in or concerning any matter in which the giving of a bond or other obligation is authorized, required or permitted by the laws of the state, \* \* \*". The purpose of this section was as stated in the act itself "\* \* \* to enable corporations created for that purpose to become surety on any bond, recognizance or other writing in the nature of a bond, in the same manner that natural persons may, subject to all the rights and liabilities of such persons." Therefore, it will be seen that prior to the 1937 enactment quoted above that an officer could give either a personal bond or a surety bond but if a surety bond were given the cost must be paid by the officer. Therefore, the 1937 Act was not to allow an officer to elect to give a surety bond but was to permit the public body protected by an official bond to pay for such bond which right they did not have prior to 1937.

Under Section 2851, supra, an officer who seeks to qualify by giving a bond would have the right to offer a personal bond or a surety bond, but by that section no obligation is placed upon the body accepting the bond to pay the premium. Since the Act of 1937, found at page 190, supra, provides that an officer may elect "\* \* \* with the consent and approval of the governing body \* \* \* \* to enter into a surety bond \* \* \* and the cost of every such surety bond shall be paid by the public body protected thereby," it evidently did not mean that the public body had to consent before a surety bond could be given since by Section 2851, supra, surety companies were already qualified to become surety on bonds. This indicates that the consent and approval of the governing body means consent to pay for the bond from the public treasury.

To hold that all the officers of this state or of any department, board, bureau or commission of this state, or any deputies, appointees, agents or employes of any such official, and all officials of any county, of this state, and their deputies, agents, appointees or employes, and all officials of any incorporated city, town or village, and their deputies, appointees, agents or employes, and all officials of any department, bureau or commission or any county, city, town or village, and their deputies, appointees, agents, or employes, and any official of any district or other sub-division of any county, or any incorporated city, or town or village, and their deputies, appointees, agents or employes, who are required by law to furnish bond can obligate the respective public treasuries to pay the premiums on the bonds by merely deciding themselves that they prefer to get a surety bond would cast a tremendous obligation upon the public without the public having anything to say in the matter other than what they have said by the Act of 1937. It is difficult to believe that the Legislature intended to shift the responsibility for furnishing a bond from the official required to furnish the bond, to the governmental agency for whose protection the bond is required.

It is a fundamental rule of statutory construction that the repeal of a statute by implication is not favored. State ex rel. St. Louis Police Relief Association v. Igoe, 107 S. W. (2d) 929, 340 Mo. 1166, and if by any fair interpretation all sections of the Statutes can stand together there is no repeal by implication. State ex rel. Karbe et al. v. Bader, 78 S. W. (2d) 835, 36 Mo. 259. For a later statute to operate as repeal by implication of an earlier one, there must be such manifest and total repugnance that two cannot stand, and if they are not irreconcilably inconsistent, both must stand. State ex rel. and to Use of Peck and Company v. Brown, 105 S. W. (2d) 909, 340 Mo. 1189.

To construe the 1937 Act as providing that the payment by the public body is mandatory would in effect repeal Section 2851, supra, insofar as it relates to bonds given by public officials and employees because they are ~~are~~ <sup>WOULD BE</sup> inconsistent with each other.

The conflict is that the 1937 Act provides that if a surety bond is given by a public official or employee the premium is to be paid by the public body while Section 2851, supra, provides that it is to be paid for by the

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person who is required to post the bond. As a practical matter the mandatory construction would do away with those provisions for personal bonds because it is obvious that no person required to give a bond would enter into a personal bond if he could enter into a surety bond, the premium on which had to be paid for from public funds.

Therefore, it will be seen that the "consent and approval" of Laws of Mo. 1937, page 190, supra, does not mean the same as the "satisfaction" that must be obtained under Section 9885, supra. When an officer must give a bond to the satisfaction of a certain body or person, it refers to the amount and security of the bond. The consent and approval as provided for in the statute means that the county court consents to the public body paying the cost of the bond, that is, the consent and approval is as to the payment and not as to the amount and security. This consent and approval is not a prerequisite to the giving of a surety bond which the officer himself will pay for but only must be obtained in order to hold the public body protected liable for the payment of the premium. (It is not mandatory upon the governing body to give such consent and approval to every officer who elects to give a surety bond. The governing body in its discretion may or may not agree to permit such bond to be paid for the public body protected, but if consent and approval is given, then the public body becomes liable for the payment of the premium.)

Applying the above principles to the facts as presented in your request, if the county court which is the governing body gave its consent and approval to the collector to enter into a surety bond the premium for which was to be paid by the public body protected thereby, then the county, by such action, became bound and the striking of such amount from the estimate of the county collector given to the county court under the provisions of the County Budget Act was unlawful and of no effect and the public body protected thereby remains liable.)

## II.

Your next question is out of what class of the County Budget should the premium be paid. We believe that such payment should be made out of Class 4 of the County Budget which

is for the following purpose (Laws of Mo. 1933, page 344, section 5 ):

"Class 4: Pay or salaries of officers and office expense. List each office separately and the deputy hire separately (County Clerk shall prepare estimate for the county court but his failure does not excuse the court)"

It is the opinion of this department that moneys paid for premiums on bonds fall within this class and should be paid therefrom.

### III.

Your last question is whether the county court should pay the entire amount of the premium from county funds or should the expense be apportioned by payment by the various political sub-divisions protected by such bond.

We will state it in another way. Since the collector, besides collecting county revenue also collects state taxes, school taxes and various other taxes, should not such funds bear their proportionate part of the premiums since they are protected under the bond of the collector?

The statute is ambiguous and uncertain in its provision for payment. It provides that the giving of such a bond is dependent upon the consent and approval of the governing body "of such state department, board, bureau, commission, official, county, city, town village or other political sub-division," but it provides that the cost shall be paid by "the public body protected thereby." It is a cardinal rule of statutory construction that where the language of a statute is of doubtful meaning, the duty devolves upon the court to ascertain the true meaning by discovering the intention of the Legislature. *State v. Toombs*, 25 S. W. (2d) 101; *Darlington v. Missouri Pacific R. R. Co.*, 216 Mo. 658, 59 C. J. 957.

We believe that it was the intent of the Legislature that the bond of county collector should be paid by the county and not be apportioned among the various political

sub-divisions whose taxes the collector collects. The reasons for this position are as follows:

First, there is a well founded maxim of the law that "It is proper in law to argue because of inconvenience (Argumentum ab inconvenienti est validum in lege.) As was said by Judge Lamm in Paving Co. v. Hayward, 248 Mo. 280, 287:

"The inconvenience arising from such construction of the statute precludes adopting it, provided any other course be open in reason."

Johnston v. Ragan, 265 Mo. 420, lays down the same rule.

It is a matter of common knowledge that collectors in some counties of this state not only collect the taxes for the county and for the state but also for the school districts which in some counties run one hundred or more and also collects taxes for road districts which some counties have to the number of twenty or thirty. It would be inconvenient, if not impractical, for the county collector to apportion the amount of the premium among these various political sub-divisions, and the state auditor, in auditing such accounts, would have such a Herculean task that to place such construction upon the statute would be to infer that the Legislature intended an absurd thing.

Second. There has been no appropriation by the State Legislature to pay for the bonds of such officials. The county collector collects state moneys and if the state were to be included within the scope of the phrase "public body protected thereby," then there would have to be an appropriation by the Legislature to pay for such bonds. The Legislature, in not providing any money for such payment, must have intended that such bonds should be paid entirely by the county and that the state should not be liable for a proportionate part of such premium. This view was taken in the case of State ex rel. Portland Cement Co.

v. Smith, 90 S. W. (2d) 405, in which our Supreme Court concluded that the Legislature did not intend that the State Highway Department should pay sales tax because it had made no appropriation for such purpose.

Third. The statute in question provides that the premium of the cost of the bond should be "paid by the public body protected thereby."

The above phrase is in the singular and provides for only one body to pay the cost of the bond. While we are aware of the rule of statutory construction that "words importing the singular number may extend and be applied to serve persons or things," however, this rule is not to be applied except where it is necessary to carry out the evident intent of the statute. First National Bank in St. Louis v. State ex inf. Barrett, 68 L. Ed. 486.

Fourth. The Legislature has by other statutory enactments imposed upon the county the burden of paying for work done by county officials for other political subdivisions.

Under Section 9877, Laws of Mo. 1933, page 422, the State and the County pay one half each for the words and figures used in the extension of taxes. Such road districts, school districts, etc., whose taxes are extended do not reimburse the county for their part of this labor but the county bears the entire expense except that for which the state pays.

Under Section 10007, R. S. Mo. 1929, the State and County pay for the extension of taxes in proportion to the columns used by each which would be one column for the state and the other column, including all the subdivisions of the county, paid for by the county.

#### CONCLUSION.

It is, therefore, the opinion of this department that:

First: That the County Court under Laws of Mis-

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souri, 1937, page 190, may consent to a Surety Bond of a collector being paid for by the "public body protected thereby", and that the amount of the premium on such bond should be included in the estimate of the collector given under the County Budget Act. This consent is discretionary with the County Court and if it is not given, then the expense of the bond either personal or surety must be borne by the collector.

Second: If consent is given by the County Court for the public body protected to pay the premium on the surety bond of a county collector, then such payment should be made out of Class 4 of the County Budget.

Third: The county is the "public body protected thereby" under the bond of a county collector and, therefore, the county should pay the entire amount of the premium upon such bond.

Respectfully submitted,

ARTHUR O'KEEFE  
Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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