

BONDS: COUNTY COURTS: Liable for payment of premiums covering officer's entire term of office when consent and approval made to election of officer to give surety bond.

January 11, 1940

Mr. Henry C. M. Lamkin  
Prosecuting Attorney  
Callaway County  
Fulton, Missouri

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Dear Mr. Lamkin:

We are in receipt of your request for an opinion wherein you state as follows:

"Sometime ago I requested from your office an opinion in the matter of the county court's responsibility for paying for the surety bonds for county officials. I am in receipt of the opinion of your office dated April 4, 1939, furnished to Honorable W. J. Melton, Presiding Judge of the County Court of Charleston, Missouri.

While this is an excellent opinion and throws considerable light on the suggestion, I fear I failed to make myself exactly clear. I will attempt to clarify that question now.

The Callaway County Court consented and approved the payment of surety bonds for county officials by the county court for the year 1939. These bonds were furnished, examined and approved by the county court and the premium for 1939 was paid thereon. An examination of the bonds, which, as will be noted above, were approved and accepted by the court, were for the officers' entire term of office, for example, the county collector's bond binds the surety company from January 1, 1939 to January 1, 1943. Since these bonds were approved by the court, is the court thereby bound to pay the premium for the succeeding three years?

I would appreciate an opinion from your office on this matter as soon as possible."

In the opinion to which you refer in your letter, this department held, in part, as follows (page 7):

"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 \* \* \* \* \*" for the payment of such premium.

Said conclusion was based on the Laws of Missouri, 1937, page 190, Section 1, which provides in part:

"Whenever any officer \* \* \* \* \* of any county of this state \* \* \* \* \* shall be required by the law of this state, \* \* \* \* \* to enter into any official bond, \* \* \* \* \* he may elect, with the consent and approval of the governing body of such \* \* \* \* \* county \* \* \* \* \* enter into a surety bond \* \* \* \* \* with a surety company \* \* \* \* \* 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."

The opinion above referred to points out (page 5):

"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."

In view of the fact that a surety bond is ordinarily safer than a personal bond, it would be unreasonable to presume that when the legislature said "the cost of every surety bond", they meant any other than the full cost of the bond for the full term of the representative officer. State ex rel and to Use of Drainage District No. 8 of Pemiscot County v. McKay, 227 Mo. App. 327, 52 S. W. (2d) 229.

According to your letter, the county court consented and approved the payment of the surety bonds of the respective county officers for their full terms. There was nothing compulsory under the law for such action by the court. They exercised their discretion, and, in reliance on same, the county officer entered into a surety bond with a surety company.

15 C. J., Section 123, page 471, in discussing the actions of county courts or boards, as referred to in some jurisdictions, declared:

"Where the previous action of the board is in the nature of a contract which has been accepted by the other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party."

The fact that the agreement by the county court to pay premiums on the surety bond might extend beyond the term of office of some member or members of the county court cannot be set up as grounds for failure to meet the cost of the premiums.

In the case of Aslin v. Stoddard County, 106 S. W. (2d) 472, l. c. 476, the Supreme Court of Missouri, in pointing out that a county court had the power to make a

contract for a reasonable time, the performance of which would extend beyond the term of office of some member or members of the county court, said:

"In Walker v. Linn County, 72 Mo. 650, the county court, through an appointed agent, insured county property for a period of five years. Point was made, on demurrer, that the court had no power to make the contract. This court held that the county court, under its statutory authority to 'have the control and management' of the county's property and its statutory duty to 'take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage,' had the implied authority to insure the buildings belonging to the county. The contract was held valid. The question of the time of performance as extending beyond the terms of office of the then members of the court was not raised and was not discussed in the opinion, and that case therefore can hardly be considered authority one way or the other on the point we now have under consideration. But, if thought of at all, the time factor must have been regarded by the court as not affecting the validity of the contract. And, whether considered or not in that case, can it be doubted that the county court, empowered to insure the county property, could lawfully make a contract for insurance extending beyond the terms of office of its then members, if such contract was made in good faith and was (perhaps because of a lower annual premium than for a short period) advantageous to the county? We think not. Other illustrations might be given. In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold."

Mr. Henry C. M. Lamkin

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From the foregoing, we are of the opinion that where a county court consents and approves the election by the county officer to give a surety bond, it is the duty of the county court to pay the premiums on the bond covering the officer's entire term of office.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General

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