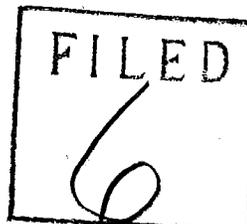


BONDS:) Bonds deposited in banks and trust companies
STATE TREASURER:) do not have to be inspected by Governor,
Attorney-General and State Treasurer personally,
but such duty may be delegated.

April 12, 1941

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Honorable Wilson Bell
State Treasurer
Jefferson City, Missouri

Dear Sir:

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

"Under Section 13086, R. S. Mo. 1939, the Governor, Attorney-General and State Treasurer are required to inspect bonds deposited by the state in various banks and trust companies in this state.

"Must this inspection be done by the various officials therein mentioned, or may this duty be delegated by them?"

Section 13086, R. S. Mo. 1939, provides in part as follows:

"* * * and the governor, attorney-general and state treasurer shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the state treasury, or in the vaults of such banks or bank, trust company or trust companies, other than the bank or banks, trust company or trust companies, selected as the state depositories, as the governor, attorney general and state treasurer may have duly agreed upon: * * *"

The question presented is whether this inspection of the bonds must be by the Governor, Attorney-General and State Treasurer in person, or may such duty be delegated by them?

The duty imposed by the statute is that it must be ascertained from time to time that certain bonds deposited by the State in the vaults of various banks and trust companies are actually kept in such vaults. This duty in no ways requires the exercise of any discretion but is a mere ascertainment of a fact, that is, whether the bonds are, or are not, in such vaults.

It is the universal rule that "an officer, to whom discretion is intrusted, cannot delegate the exercise thereof, but ministerial duties, except where there is a statutory prohibition, may be delegated." 46 C. J. 1033, and Missouri cases cited thereunder.

A "ministerial duty," as defined in State ex rel. Hutchinson v. McGrath, 92 Mo. 355, 5 S. W. 29, is:

"A simple definite duty, arising under conditions admitted or proved to exist, and imposed by law."

As was said in State ex rel. v. Meier, 143 Mo. 439, 45 S. W. 306,

"A ministerial act is one which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the acts being done."

It appears obvious that the inspection of the vaults to ascertain whether the bonds are kept therein, is something which is a duty in which nothing is left to discretion but must be performed in a manner prescribed by law, and the person performing the duty cannot exercise his own judgment in regard to such act.

In the case of State ex rel. Construction Co., v. Reber, 226 Mo. 229, our Supreme Court had the following to say in regard to whether the President of the Board of Public Improvements was required to sign tax bills. We quote at length from this opinion because the language therein is apropos to the instant case. The court said (l. c. 236):

"The requirement of section 41, article 4, is that, 'He shall authenticate all special taxbills.' If that should be construed to mean that he must go over the calculations made by the street commissioner to see that the apportionment to each lot of the total cost is correct, and that that must be done in person, the task would be as great and as enduring as if he had made the calculations himself in the first instance. The authentication required by that section of the charter is the certification, evidenced by his signature, that the taxbills are those that came to him through the regular official channel. It is doubtless his duty under the ordinance to receive personally from the street department the taxbills and himself deliver them to his assistant to be signed and himself deliver them to the comptroller and take his receipt. But all that is ministerial work, not work of unimportance, not work to be carelessly done, but still not work that requires the exercise of discretion and judgment. The discretion that the president of the board of public improvements has in reference to the subject is exercised when he counsels with the other members of the board in their meeting on the subject of the then contemplated street improvement, when he draws or assists in drawing the ordinance, when he assists in awarding the contract, etc., but after

the contract is let and the work is done and the street commissioner has found that it is done according to the contract and makes out the tax-bills and delivers them to the president, the latter has then no discretion, but it is his simple duty to authenticate them by his signature and deliver them to the comptroller. An officer to whom a discretion is entrusted by law cannot delegate to another the exercise of that discretion, but after he has himself exercised the discretion he may, under proper conditions, delegate to another the performance of a ministerial act to evidence the result of his own exercise of the discretion."

In State ex rel. Gay v. Reyburn, 158 Mo. App. 172, the court had before it a statute providing that the books and papers of the clerk of the county court should be at all times ready "for the inspection of the court or any judge thereof." The court held as follows (l. c. 176):

"The matter of inspecting the books and papers of the clerk's office is purely ministerial and in no respect judicial in its character. It is therefore entirely clear that the law does not devolve it as a personal duty upon a judge of the county court which he may not delegate to another who is competent to perform such a task, especially when it appears the judge himself is from any cause unable or incapacitated to effectually discharge it. But that matter is unimportant, for the judge might cause the investigation to be made by expert accountants or others of his choosing though he were entirely competent himself. The principle announced in State ex rel. Johnson v. Transit Co., 124 Mo. App. 111, 100 S. W. 1126, is equally relevant here."

Even though this duty of inspecting the bonds in the vaults were not ministerial, still it seems that such inspection could be delegated to an assistant or agent who could report back to his superior his findings. In this regard we call your attention to the case of *Town of West Springfield v. Mayo*, 163 N. E. 653, decided by the Supreme Court of Massachusetts in 1928. The question involved in that case was whether a zoning by-law had been approved by the Attorney-General as required by law. The court said: (l. c. 654)

"In this respect the contention of the defendants is that the map is an essential part of the by-law, and that as matter of law the Attorney-General could not approve the map which he did not see. Of course it is true, as the defendants contend, that 'official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person.' *Brown v. Newburyport*, 209 Mass. 259, 266, 95 N. E. 504, 508 (Ann. Cas. 1912B, 495), and cases cited. Obviously this rule goes no further than to require the official to exercise his own judgment and discretion upon matters which are committed to him for determination. It does not inhibit the official's use of assistance when the act to be done requires an examination or inspection of documents or physical objects. Nor does it prohibit the official from arriving at a conclusion of fact which is based upon the report of an assistant. It was not necessary that the Attorney General should approve the map separate and apart from the by-law. Nor was it necessary to the exercise of his judgment that the map should have been physically before him or that he personally should have examined it and traced the boundaries of the various zones. It was sufficient that the

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map was examined with the by-law for him, by one of his legal assistants; and that, receiving the report of his assistant, upon his own judgment he approved the by-law of which the map was an integral part. Lajoie v. Milliken, 242 Mass. 508, 523, 136 N.E. 419."

Conclusion

In view of the above authorities it will be seen that the inspection of state bonds in vaults of banks and trust companies, as required by Section 13086, R. S. Mo. 1939, does not have to be personally done by the Governor, State Treasurer and Attorney-General, but such duty may be delegated by them.

Respectfully submitted,

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APPROVED:

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