

OFFICIAL BONDS:
COUNTY COLLECTOR:

County court can, at any time, require additional bond to be furnished by county collector if a mistake was made in the amount of taxes collected in the years previous to his election.

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August 20, 1941

Honorable Phil H. Cook
Prosecuting Attorney
Lafayette County
Lexington, Missouri



Dear Sir:

We are in receipt of your request for an official opinion under date of August 15, 1941, which reads as follows:

"Will you please give me an opinion on the following set of facts: On March 6, 1939 the county collector of Lafayette County filed an official bond with the county court in the sum of \$240,000.00. No order was made by the court requiring the county collector to deposit his receipts daily. The largest amount collected by the county collector during the year 1938 was \$348,662.26. In view of Section 11056 of the Revised Statutes of Missouri for 1939, it would appear that the collector's bond should have been in an amount equal to \$348,662.26 plus ten per cent. Does the county court at this time have the right to require the county collector to give additional security or enter into a new bond covering the \$348,662.26 plus ten per cent."

Section 11056, R. S. Missouri 1939, partially reads as follows:

"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 enter-

ing 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: * * * * *

Under the above partial section it is mandatory that the county collector give bond and security to the state which bond should be approved by the county court. This bond should be in a sum equal to the largest monthly collection of the previous year preceding the election or appointment of the collector plus ten per cent of said largest monthly sum.

Under Section 11062, R. S. Missouri 1939, the collector's bond, when received by the state auditor, must be examined by the auditor and if found that it conforms to the law, and the sureties are satisfactory, he shall file the same in his office and immediately certify the fact thereof to the clerk of the county court; but if the auditor finds the bond not to be in accordance with law, or if he has reason to doubt the sufficiency of the security, he shall immediately return the bond to the clerk of the county court.

Section 3260, R. S. Missouri 1939, reads as follows:

"As soon as practicable after the taking effect of this article, and at least once in each year thereafter, the officers and courts required by law to examine and approve any such bonds shall examine as to their sufficiency and as to the solvency of the sureties therein, and shall briefly note thereon, or on the record thereof, the result of such examination; and if any such bond be for any reason deemed insufficient, the principal therein shall be required by a notice in writing to furnish a new and sufficient bond within thirty days;

and if such bond be not so furnished and approved, the office shall at the expiration of said thirty days become vacant, and the vacancy shall be filled as provided by law."

Under the above section it is the duty of the county court to examine to see if the county collector's bond be for any reason deemed insufficient. If they find the bond is insufficient, they should require the county collector, by a notice in writing, to furnish a new and sufficient bond within thirty days. It was held in a case in your county in State ex rel. v. Lafayette Co. Ct., 41 Mo. 545, l. c. 561, that the county court could compel the giving of a new bond where a mistake was made in the ascertaining of the revenue to be collected by the collector. In that case the court said:

"It seems to be admitted that the plaintiff did, within the time limited by the order of the court in relation to the filing of a new bond, appear and present for its approval a bond in the penal sum required in the order, but it is averred that in the meantime it had been ascertained that the revenue would actually amount to the sum of \$100,000, and that therefore the bond was insufficient on that account. Admitting this to be a true statement of the facts, it would seem to be a great hardship upon the plaintiff, after fixing the penalty at a specific sum and giving him only ten days to procure solvent sureties for so large an amount, to say to him when his bond was presented that there was a mistake in the amount of the revenue to be collected, and his bond was not large enough by at least \$30,000, and must be rejected. What was the necessity for this hasty action on the part of the County Court? If a mistake had been committed in reference

to the amount for which the bond was required to be given, Adamson was certainly not responsible for it. He had been led into error by the action of the court itself, and common fairness would seem to require that some additional time ought to have been given him to file a new bond and hunt up additional sureties. Certainly the public interest could not have suffered by pursuing such a course, and it is fair to presume that the plaintiff could not comply with the requirements of the court at once, but ought to have had a reasonable time given him to do so. The question as to the solvency of the sureties offered by the plaintiff seems really to cut but a small figure in the transaction, and great stress is laid upon the fact that the penalty of the bond offered by the plaintiff was not double the amount of the revenue to be collected, and therefore it was not such a bond as the law required. Then admitting the solvency of the sureties offered, the theory of the court would seem to be that no further time could be given to the plaintiff, and the bond must at once be rejected for insufficiency and the office declared vacant. There is much in this transaction that does not harmonize with the theory that the court was acting in the exercise of a sound and just discretion in the premises. There is nothing in the statute that prohibits the County Court from requiring the collector, at any time when the protection of the public interest would seem to demand it, to give additional bond and security. In all cases, however, he would be entitled to a reasonable time to comply with the order of the court; and if it is not given, and no good cause shown to the contrary, the presumption

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would be that the court had acted in an arbitrary and unjust manner."

CONCLUSION

In view of the above authorities it is the opinion of this department that the county court, at this time, has the authority to require the county collector to give an additional bond or enter into a new bond covering the sum of \$348,662.26, plus ten per cent.

Respectfully submitted

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APPROVED:

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