

COUNTY DEPOSITARIES: Bank which is outside of state may be selected as escrow agent.

December 3, 1941

12-23

Honorable Frank W. Jenny
Prosecuting Attorney
Franklin County
Union, Missouri



Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request the opinion of this department. Your letter is as follows:

"The Depositary for the funds of Franklin County is requesting that the Court execute a contract as per sample enclosed under the terms of which the securities pledged by the Depositary Bank will be placed in the custody and the National Stock Yards National Bank of National City, Illinois, for the safe keeping.

"It is my opinion that it is illegal for the Court to enter into a contract with a Depositary designating a bank outside of the State of Missouri as the place of safe keeping of the collateral security pledged by the Bank.

"Will you please advise your opinion of this contract, particularly of the feature making the National City, Illinois bank the Trustee and Depositary of the security."

Your question is: Is it illegal for the county court to enter into a contract with a county depositary to secure the county funds which selects a bank outside

the State of Missouri as trustee for the collateral security pledged by the depositary bank?

Section 13850, Revised Statutes of Missouri, 1939, provides in part as follows:

"Within ten days after the selection of depositaries, it shall be the duty of each successful bidder to execute a bond payable to the county, to be approved by the county court and filed in the office of the clerk thereof, with not less than five solvent sureties, who shall own unencumbered real estate in this state of as great value as the amount of said bond, or with a surety or trust company authorized by the laws of this state to execute bonds as surety: Provided, that the court may accept in lieu of real estate as security, bonds of such county, or of the State of Missouri, or of the United States, or bonds fully guaranteed by the United States, which such bonds shall be deposited as the court may direct, with a trustee, trust company or other fiduciary designated or approved by it:
* * * * "

It will be noted that the above statute provides that "the court may accept in lieu of real estate as security, bonds of such county, or of the State of Missouri, or of the United States, or bonds fully guaranteed by the United States, which such bonds shall be deposited as the court may direct with a trustee, trust company or other fiduciary designated or approved by it." In the absence of any statute, and we find none, barring a bank outside the State of Missouri from acting as trustee under the provisions of Section 13850, Revised Statutes of Missouri, 1939, we do not think that it is disqualified from so acting. The statute says that such bonds shall be deposited as the court may direct.

The Legislature has seen fit to give to the county court the discretionary power of the selection of the trustee to keep the bonds, or other securities pledged by the depository, to safeguard the county funds. It is not our province to pass on the advisability of such action by the county court, however, we know of no reason why acceptable trustees, trust companies or other fiduciaries cannot be found in the State of Missouri who are willing to accept the responsibility under the statute.

CONCLUSION

It is therefore our opinion that the bank mentioned in your letter of request, which is located outside of the State of Missouri, is qualified to act as trustee for Franklin County, Missouri, if it meets all the requirements provided by the Revised Statutes of Missouri.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

CRH:VC