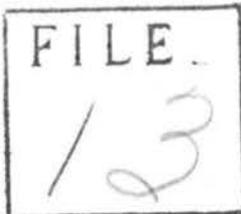


BONDS: BOARD OF ELECTION COMMISSIONERS: COUNTY COURTS: Governing body liable for payment of premiums on surety bonds where the public official elects to give surety bond and the public body protected consents and approves same.

2/12  
February 9, 1942

Hon. Hilary A. Bush  
County Counselor  
County Court of Jackson County  
Kansas City, Missouri



Dear Mr. Bush:

This is to acknowledge receipt of your letter of February 4th, in which you request the opinion of this department. Your letter of request is as follows:

"Judge George S. Montgomery, Presiding Judge of the Jackson County Court, has instructed me to ask your opinion on the following question. A. E. Garvin has for the past four years been a duly appointed, qualified and acting Election Commissioner of Jackson County. During each of the last four years he has purchased a surety bond and posted it pursuant to the provisions of Section 11884, Revised Statutes of Missouri, 1939, and he has paid the premium out of his own pocket.

"He has now presented his bill in the total sum of \$100.00, covering the four years' premium, to the County Court of Jackson County, for payment. Is this a proper obligation of our County? It is my understanding that the other Election Commissioners will also present their bills in similar amounts if this one is paid."

The question, as we understand it, is whether the County Court of Jackson County is liable for the premium on the official bonds of the members of the Board of Election Commissioners of Jackson County for the four years last past.

Under the provisions of Section 11884, R. S. Mo. 1939, the Governor, by and with the advice and consent of the Senate, appoints a Board of Election Commissioners for Jackson County, composed of four members. Said section further provides:

"\* \* \* Each Commissioner to give bond to the State in the sum of \$10,000 with security to be approved by the governor, conditioned for the faithful and honest performance of the duties of said office and the care and preservation of the property thereof. Said oath of office and the bond to be filed at the office of the secretary of state. \* \* \* "

No doubt it is the contention of the members of the Board of Election Commissioners of Jackson County that the County Court should pay the premiums on the bonds which they are required to give under the above statute.

Section 3238, R. S. Mo. 1939 (Mo. Stat. Ann. Sec. 2351a, p. 734) provides:

"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."

We think that the members of the Board of Election Commissioners come under the provisions of Section 3238, supra, and the County Court would be authorized to pay the premiums on their bonds provided the members of the Board and the County Court follow the terms thereof. We particularly call your attention to that part of Section 3238 which provides that where the official is required to enter into a bond, "he may elect, with the consent and approval of the governing body of such state, \* \* \* county, \* \* \* or other political subdivision, to enter into a surety bond, or bonds, with a surety company or surety companies, \* \* \* the cost of every such surety bond shall be paid by the public body protected thereby." Unless the above provisions are complied with, there is no obligation upon the public body protected thereby to pay the premium on the bond.

From your letter, we do not understand that the elected official in question has complied with that part of Section 3238 referred to above. Neither has the County Court consented and approved the payment of the premium. Under these circumstances the County Court would not be authorized to pay the premium without a compliance with said section. The official in question, having voluntarily paid the premium, if such is a fact, cannot be reimbursed by the County Court.

The election by the one required to give the surety bond, and the consent and approval for the officer to purchase such a bond at public expense, must be given in advance by the public body protected.

Section 3238, supra, was enacted at the 1937 Session of the General Assembly and gave authority to public bodies to pay the premiums on official bonds, but left it discretionary with said bodies whether or not they paid the premiums on such bonds. The constitutionality of this section was attacked in the case of Motley et al v. Callaway County, 149 S. W. (2d) 875, "for the reason it is taking public funds for private purposes and in conflict with Section 3, Article X, of the Constitution of the State of Missouri." The court in this case held that said Act was Constitutional, and further in said opinion, l. c. 877, it said:

" \* \* \* It is also recognized that to require an officer to pay the premiums therefor would have the effect of reducing his actual net compensation. So when consent and approval for the officer to purchase such a

bond at public expense was given in advance by 'the public body protected,' it was required to pay the cost. No one has ever contended that payment of salaries to officers, instead of requiring them to collect fees from those to whom they render service, is not a public purpose. We see no difference in principle between the use of public funds in payment of officers' salaries and authorizing their use to pay bond premiums, instead of requiring the officer to pay these himself; or to beseech other private citizens to personally guarantee his faithful performance. It will not always be in the public interest to create a situation in which a public officer may be placed under greater obligations to certain private citizens (who furnish his bond) than to the public generally. At least, we think it is within the discretion and authority of the Legislature to say which is the best public policy. \* \* \* \* \*

CONCLUSION

It is therefore our opinion that, under the facts set forth in your letter, the County Court of Jackson County would not be liable for the premiums paid by the member of the Board of Election Commissioners, because he did not elect in advance, with the consent and approval of the County Court, to purchase such bond at public expense. However, if the official desires to give a surety bond in the future, and secures the consent and approval of the County Court to do so, the County Court should pay, and is obligated to pay, the premium on same.

Respectfully submitted,

COVELL R. HEWITT  
Assistant Attorney General

APPROVED:

VANE C. SHURELO  
(Acting) Attorney General

CRH:NS