

COUNTY TREASURER: County is liable for premium on surety
OFFICERS: bond where the officer elects to give
BONDS: surety bond and county court consents
thereto.

March 9, 1943



Mr. J. P. Smith
Prosecuting Attorney
Webster County
Marshfield, 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 of request is as follows:

At the general election in 1938 Esley S. Trantham was elected county treasurer of this county. Shortly thereafter he had a conference with the county court in regard to the kind of bond he should file. The salary of the county treasurer prior to that time had been \$125.00 per month. The county court in December, 1938 made an order that his salary should be \$150.00 per month providing he would file a surety bond and pay the cost of same himself out of his increased salary. The cost of the bond was \$25.00 per month.

"Mr. Trantham did file surety bond which was accepted and approved by the court. After January 1, 1939, a new county court went into office and during January of that year the new court made an order rescinding the order of the former court and reduced Trantham's salary back to \$125.00 per month and refused to pay the premiums on his bond. He included the amount of his premiums each year in his

annual budget which was by the court disallowed. Trantham is now contending that the county is liable under section 3238 R. S. 1939 for the premiums on the bond, which Mr. Trantham has already paid.

"Will you please let me have your opinion as to whether or not Webster County, under the above circumstances, is liable for the repayment of the premiums to Mr. Trantham."

Your question is whether or not Webster County, under the statement of facts set forth in your letter, is liable for the payment of the premium of the surety bond to secure the faithful performance of the duties of the office of county treasurer, which premium amounted to \$25.00 per month, or, \$300 per year.

Under Section 13795, R. S. Mo. 1939, which was repealed and re-enacted by the 1937 Session of the General Assembly, and found in Laws of Missouri 1937, page 426, it is provided, R. S. Mo. 1939, as follows:

"The person elected or appointed county treasurer under the provisions of this article shall, within ten days after his election or appointment as such, enter into bond to the county in a sum not less than twenty thousand dollars, to be fixed by the county court, and with such sureties, resident landholders of the county, as shall be approved by such court, conditioned for the faithful performance of the duties of his office."

At the 1937 Session of the General Assembly, what is now Section 3238, R. S. Mo. 1939, was passed (Laws of Missouri 1937, page 190) and provides in part as follows:

"Whenever * * * any officer of any county 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 * * * county * * * 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."

It will be noted that under the provisions of Section 13795, supra, the person elected or appointed county treasurer shall, within ten days after his election or appointment, enter into a bond to the county in a sum of not less than \$20,000 with such sureties, resident landholders of the county, as shall be approved by the county court for the faithful performance of his duties. However, by Section 3238, supra, which was enacted at the same Session of the Legislature, it is provided that the county treasurer may, with the consent and approval of the governing body, which in this instance means the county court, elect to enter into a surety company bond. If the officer elects to give a surety company bond and the county court consents to the giving of such bond the county court is liable for the payment of such bond.

This construction was given this section by the Supreme Court of this state in the case of Motley v. Callaway County, 149 S. W. (2d) 875, at l. c. 877, wherein the court said:

"* * * The Legislature, no doubt taking notice of the results of some of these during recent depression periods, considered that surety company bonds could give better protection to public funds in the custody of public officers. It, therefore, authorized such a bond for county officers if the officer elected to furnish it and the county court approved it. It also recognized that to require an officer to pay the premiums therefor would have the effect of reducing his actual net compensation. * * * * *"

Under the statement of facts given in your letter, if the County Court made an order in December 1938, directing that the County treasurer's salary be \$150.00 per month, provided he would file a surety bond and pay the cost of same himself out of his increased salary, and if the County Court consented to this order and approved same, the County would be liable for the payment of the surety bond of \$300 per year, namely, \$25.00 per month, indicated in the amount of the increased salary.

You state that after the first day of January, 1939, a new County Court went into office and rescinded the action of the old County Court and reduced the County treasurer's salary to \$125.00 per month and refused to pay the premium on the bond. The action of the old County Court by its written record, under the circumstances, in our opinion, could not be rescinded or changed by the new County Court.

In the case of *Aslin v. Stoddard County*, 106 S. W. (2d) 472, l. c. 476, the court said:

"We regard said case of *Manley v. Scott* as in point and as being soundly reasoned. The county court, as we have said, is a continuous body. It represents and acts for the county. In making contracts it may be said to be the county. Many contracts, proper enough and reasonable as to the time of performance, can be conceived which, of necessity, could not be fully performed during the incumbency of all of the judges in office at the time such contracts were made. To hold such contracts invalid and the court powerless to make them simply because some members of the court ceased to be members thereof before expiration of the period for which the contract was made might, and in many instances doubtless would, put the county at disadvantage and loss in making contracts essential to the safe, prudent, and economical management of its affairs. To illustrate:

"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. * * * * *

We think that the above statement of law in the Aslin case is applicable to the facts as set forth in your letter, and if, in this instance, the County treasurer, Mr. Trantham, elected to give a surety bond with the consent and approval of the County Court of such county and same was made a matter of record by the Court, that same could not be rescinded immediately thereafter by the new County Court.

CONCLUSION

It is, therefore, our opinion that under the statement of facts as given in your letter of request, and the order, as we understand it, having been made a matter of record by the old County Court, the County is liable for the payment of the \$300 surety bond given by the County treasurer for the year, even though it was paid to the County treasurer in the form of salary, for the purpose of paying the premium on the bond.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

CRH:CP