

GOVERNOR : Inspection of bonds enumerated in Section  
13086 R.S. Mo. 1939 -- Power of State Officers  
to delegate duty of inspection.

December 8, 1944



Honorable Forrest C. Donnell  
Governor of Missouri  
Jefferson City, Missouri

Dear Governor Donnell:

Your letter of December 8, 1944, addressed to General McKittrick, and in which you request an opinion, has been referred to the writer for reply. Your letter states:

"Section 13086 of the Revised Statutes of Missouri of 1939 reads 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: \* \* \*".

"Your opinion, as soon as possible is respectfully requested on the following question:

"Will compliance with the above quoted portion of said Section 13086 be had if (a) a person designated by the governor, (b) the attorney general and (c) the state treasurer shall, from time to time,

Honorable Forrest C. Donnell

December 8, 1944

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?"

Article 2 of Chapter 87, R.S. Mo. 1939, deals generally with the subject of depositories of State money. Section 13086 specifies the character of bonds required for the security of State funds deposited by the State Treasurer under Articles 1 and 2 of Chapter 87 aforesaid, and enumerates and specifies what bonds shall be taken for such purpose.

Your particular inquiry is whether compliance with that part of Section 13086 quoted in your letter calling for an inspection of the bonds deposited for such security if:

"(a) a person designated by the governor, (b) the attorney general and (c) the 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 inspection of the bonds has nothing to do with the selection of the bonds or their worth or value as security. The inspection of the character, identity and number of any of the bonds enumerated in Section 13086 would be a ministerial act involving no exercise of discretion, and may be delegated.

40 C.J., page 1210, paragraph 5, gives the following definition of a ministerial duty:

"A ministerial duty has been variously defined as a duty in which nothing is left to discretion; a duty performed by one acting under superior authority, or not with unlimited control; a simple,

definite duty, arising under conditions admitted or proved to exist, and imposed by law; an absolute and imperative duty, the discharge of which requires neither the exercise of official discretion nor judgment. \* \* \*

46 C.J., page 1063, states the rule that ministerial duties may be delegated in the following language:

"Without statutory authority, deputies have no power with respect to the duties of an office involving the exercise of judgment and discretion, but all ministerial duties pertaining to the office which the principal could perform may be performed by a deputy. \* \* \*

In the case of State ex rel. V. Hudson, 226 Mo. 239, l.c. 265, a ministerial duty is defined as follows:

"In State of Miss. v. Andrew Johnson, President of the United States, 4 Wall. l.c. 498, a ministerial duty enforceable by a court through a writ of mandamus was thus defined: 'A ministerial duty, the performance of which may, in proper cases, be required of the head of a department, by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted, or proved to exist, and imposed by law.'"

And in the case of State ex rel. v. Meier, 143 Mo. 439, at l.c. 447, the Court quoted and adopted the following definition of a ministerial act:

"\* \* \* 'A ministerial act is one which a public officer is required to perform upon a given state of facts in a prescribed manner in obedience to the mandate of legal authority, and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed.' Merrill

on Mandamus, sec. 30; Marcum v. Com'rs.,  
42 W. Va. 263, and cases cited."

Corpus Juris lays down the rule that at common law, public officers may appoint deputies for the discharge of ministerial duties. And we have no statute to the contrary in Missouri. This text is found in 46 C.J., page 1062, paragraph 380, which is as follows:

"\* \* \* At common law, however, public officers may appoint deputies for the discharge of ministerial duties, \* \* \*"

It is well settled that the performance of purely ministerial functions can be delegated to others to be performed. This was a principle of the common law and has been followed in the decisions in this and other states.

In the early case of Hunter v. Hemphill, 6 Mo. 106, the Court, at l.c. 21, said:

"\* \* \* Before that question could be determined, it would be necessary to look into the nature of the act which was to be performed, if a mere clerical act, it might have been performed by deputy; if a judicial act, and the register does, for some purposes, and in some matters, act as a judicial officer (as in granting pre-emptions) the act could not have been performed by deputy. \*\* "  
(Underscoring ours)

And in the case of Small v. Field, 102 Mo. 104, in passing upon the right of a clerk of a court to appoint a deputy where no statutory authority was found, the following quotation is found at l.c. 119:

"The office of clerk of a court seems to be one which, from its nature and constitution, implies a power or right to execute it by deputy. Whenever nothing is required but superintendency in office a ministerial officer may make a deputy. 7 Bac. Abr. 316,

317, - - Tit. Offices and Officers. And the rule is general that a deputy may do every act which his principal might do. Com. Dig. Officers, D. 3; Confiscation Cases, 20 Wall. 92."

In the case of State ex rel. v. Reyburn, 158 M. A. 172, a case in which mandamus was granted against a county clerk to compel him to permit the examination of the books and papers in his office by an accountant employed by one member of the County Court, the St. Louis Court of Appeals, said, at l.c. 176-177:

"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."

In the matter submitted, the propriety of the appointment by the Governor and State Treasurer of other persons to perform such ministerial duties as the inspection of the bonds mentioned in Section 13086 R.S. Mo. 1939, the above citations from 46 C. J. page 1062, paragraph 380, the case of Hunter vs. Hemphill, Supra, cited under said Section of Corpus Juris, and the case of Small vs. Field, Supra, constitute sound legal authority to permit the Governor and State Treasurer to so designate some person, under the common law, to represent each of them respectively in the performance of such ministerial duties. The Attorney General has authority under Section 12902, R.S. Mo. 1939 to appoint certain Assistants who are given the power by statute, "to represent him in all trials and proceedings in which he may be required to appear or participate. \* \*"

December 8, 1944

CONCLUSION.

Considering the nature of the duty to inspect the bonds in the vaults enumerated in that part of Section 13086 R. S. Mo. 1939, quoted in your letter, and following the above cited and quoted authorities, it is the conclusion of this Department that the Governor, the Attorney General and the State Treasurer have the authority to delegate to some other person or persons the duty of making the inspection required in that part of Section 13086 quoted in your letter.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

VANE C. THURLO  
Acting Attorney General

GWC:lr