

COUNTY FUND:

Money raised under tax levy by circuit court for erecting a jail must be deposited in county depository and cannot be invested in United States Government Bonds.

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June 4, 1948

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Honorable Edwin W. Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Sir:

This is in reply to your letter of recent date requesting an official opinion of this department and reading as follows:

"On April 22nd, 1943, upon verified petition of the Prosecuting Attorney and the written request of the County Court, for an order of the Circuit Court directing the levy and collection of an additional tax of 10 cts. on the \$100.00 of assessed valuation of all taxable property in St. Clair County, for the purposes of acquiring a site and building a modern jail thereon:

"The Circuit Court found that the necessity for such additional tax existed and under the provisions of Sections 11040 and 11041, R. S. Mo. 1939, ordered the requested levy and collection.

"The Circuit Court also made an express order that none of such fund should be diverted or used for any other purpose.

"Thus has been accumulated in the County Treasury a 'jail fund' of nearly \$40,000 at this time. It is in the local bank - the County Depository - protected by the statutory bond, securities, etc.

"The County Court finds it inopportune to attempt the building of a jail at present, and realizes that the County could receive

more interest on this fund if it were invested in U. S. Government bonds. Is there any legal objection to such investment?

"The County Court has asked me to write your department for this opinion and will appreciate hearing from you on this question."

The general rule with regard to the powers of the county court is found in *Jensen v. Wilson Township*, 145 S. W. (2d) 372, where the Supreme Court said, l. c. 374:

" * * * A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. *State ex rel. Quincy, etc., Ry. Co. v. Harris*, 96 Mo. 29, 8 S. W. 794. * * * "

Article 9, Chapter 100, Mo. R. S. A., provides the statutory method for the selection of county depositaries where county funds are to be kept.

Section 13849, R. S. Mo. 1939, provides that the county court shall select the depositaries of all public funds of every kind and description, the deposit of which is not otherwise provided for by law.

In the case of *Boone County v. Cantley*, 51 S. W. (2d) 56, the Supreme Court said, l. c. 58:

" * * * A county is authorized to deposit its funds in county depositaries only. * * * "

In the case of *Halls County v. Commissioner of Finance*, 66 S. W. (2d) 115, the Supreme Court said, l. c. 116:

"Article 9, c. 85, R. S. Mo. 1929 (Mo. St. Ann. art. 9, c. 85, p. 6455 et seq.), makes it the mandatory duty of the county court to select depositaries in which the funds of the county shall be deposited, and provides in detail how such depositaries shall be selected and qualified. * * * "

Honorable Edwin W. Mills

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"A county has no lawful right to deposit county funds except in a county depository. * * *"

Since Article 9, Chapter 100, Mo. R. S. A., provides the statutory authority of the county court in dealing with county funds, and no special provision exists as regards the moneys raised by a special levy for the purpose of building a jail, it is our view that the moneys in such fund must be deposited in the county depositories and cannot be used to purchase United States Government Bonds.

CONCLUSION

It is the opinion of this department that moneys raised as a result of a levy ordered by the circuit court for the purpose of building a jail, and which are at present in such special fund, must be deposited in the county depositories, and the county court has no authority to purchase United States Government bonds out of the moneys in such fund.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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