

BANKS, DEPOSITARIES) A depository of county funds may be required to give
OF PUBLIC FUNDS:) security for only such funds as are in excess of ten
) thousand dollars where the depository is insured by the
) Federal Deposit Insurance Corporation.

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Mr. William L. Hungate
Prosecuting Attorney
Lincoln County
Troy, Missouri

Dear Mr. Hungate:

We have given careful consideration to your request for an opinion, which request is as follows:

"Ten thousand dollars of the county funds is deposited with each of three county depositories in Lincoln County, Missouri. (There are three other depositories in the county that handle the balance of the county funds.) Pursuant to Section 110.020 RSMo 1949 these depositories, insured by the F.D.I.C., have put up \$5000.00 security. Now that the F.D.I.C. has increased its insurance from five to ten thousand dollars these three depositories are beseeching the County Court to permit them to withdraw the \$5000.00 security since the F.D.I.C. insures the full \$10,000.00 of public funds deposited with each of them. The Court is willing to comply with their request unless the provisions of Section 110.020 prohibit compliance.

"Please advise me if the County Court would be justified in permitting these depositories to give security for only such county funds as are in excess of \$10,000.00."

The law governing this question is contained in Sections 362.490 and 110.020, RSMo 1949.

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Section 362.490 is as follows:

"Notwithstanding any provision of law of this state or of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of an act of congress creating and establishing the Federal Deposit Insurance Corporation or similar agency created and established by the congress of the United States."

Section 110.020 is as follows:

"The value of the securities deposited and maintained by a legal depository under section 110.010, shall at all times be not less than one hundred per cent of the actual amount of the funds on deposit with said depository, less five thousand dollars where the depository is insured by the Federal Deposit Insurance Corporation."

These two statutes appear to be in conflict, inasmuch as Section 110.020 seems to limit the security of the Federal Deposit Insurance Corporation to a credit of five thousand dollars. We find it necessary, therefore, to examine some of the rules of law pertaining to the question of statutory construction.

The Supreme Court of Missouri in *Dysart v. City of St. Louis*, 11 S.W. (2d) 1045, l.c. 1050, said:

"It is the duty of the court, in construing statutes which appear to be in conflict, to reconcile them, if possible, with the general legislative purpose. * * *"

The same high court in *Cummins v. Kansas City Public Service Company*, 334 Mo. 672, l.c. 684, said:

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"* * * The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature honestly and faithfully, its plain and rational meaning and to promote its object, and 'the manifest purpose of the statute, considered historically,' is properly given consideration. [See Grier and Meyer-ing cases; 2 Lewis-Sutherland on Stat. Const. (2 Ed.), sec. 363; Endlich on Interpretation of Statutes, sec. 329; and Maxwell on Statutes (5 Ed.) 425.7]"

Using these principles as a guide, we may examine the two sections quoted above to determine whether or not there is really any conflict between the two. Section 362.490 was enacted as an amendment to the banking laws in 1935. Laws 1935, p. 372. This statute simply means that security for deposits of public funds shall not be required to the extent that said deposits are insured by the Federal Deposit Insurance Corporation.

Section 110.020 was Section 2 of an act passed by the legislature in 1937, relating to depositaries of public funds and the securities required for the safekeeping thereof. Laws 1937, p. 502. The purpose of this section is to require a depositary to give and maintain security of not less than one hundred per cent of the actual amount of the funds on deposit with said depositary. It was not the intent of the legislature to repeal any part of the act of 1935. On the contrary, it was intended to make the act of 1937 conform with the enactment of 1935. The words "five thousand dollars" were written into the law because at that time deposits could not be insured for more than that amount under the act of Congress establishing the Federal Deposit Insurance Corporation. But the federal law has been changed, and deposits are now insured up to ten thousand dollars. Pub. Law 797, Ch. 967, 64 U.S. Stat. at Large. The words "five thousand dollars" in Section 110.020 now have no meaning, for the public funds may be protected up to ten thousand dollars without deposit of securities as collateral. This is the purpose of the law, and nothing else is required.

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CONCLUSION

It is the opinion of this office that the county court may require a depository of the county funds to give security for only such funds as are in excess of ten thousand dollars where the depository is insured by the Federal Deposit Insurance Corporation.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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