

COUNTY COURTS:
COUNTY DEPOSITARY:

County court cannot place county funds in an account outside the county depository; such would not be grounds for removal from office in the absence of fraud or misappropriation.



March 12, 1953

Honorable J. Patrick Wheeler
Prosecuting Attorney of
Lewis County
Monticello, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"The particular problem is whether or not the county court may lawfully and legally maintain a separate account outside the county depository and draw upon same without issuance of warrant. * * * Also, in connection with this section, whether or not maintenance of such separate account would be grounds for an action to remove the county judges involved, there being no evidence of malfeasance."

You inquire first whether or not the county court may lawfully maintain a separate account or fund, other than in a county depository and draw upon such account without the issuance of warrants.

The fund or account to which you refer was established by the county court under the provisions of a will by which certain property was left to the county solely for the use of the county for the support of the poor. The fund once established constitutes county funds and would be subject to the provisions of law applicable to other county funds although it would be designated a separate fund to be used only for certain purposes.

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Chapter 110, RSMo 1949, Sections 110.010 to 110.060, contains general provisions relating to depositaries. Sections 110.130 to 110.260 specifically relate to county depositaries. Section 110.130 makes it the duty of the county court to advertise for bids for the selection of depositaries for county funds. Section 110.140 provides procedure for bidders. Section 110.150 relates to opening of the bids, etc. Section 110.030 provides that the various statutory provisions in relation to the advertisement for, and receipt of, bids and the award of funds to the lowest bidder need not be followed if, at the time of said advertisement of award, it shall be unlawful for banking institutions to pay interest upon demand deposits, and further provides that in such event the awards shall be made without bids by the authority or authorities who are by statute empowered to make the award of such funds upon bids.

Section 110.160 provides the character and kind of bonds to be given by county depositaries and other provisions. Under these provisions, we are of the opinion that county funds are required to be placed in depositaries selected and qualified as specified in the above noted provisions.

Noting these provisions, the Supreme Court of Missouri, in the case of Cantley v. Beard, 98 S. W. (2d) 730, said:

"* * *The Bank of Barnett was not a county depository at the time of the deposit, as stated, and the county court had no right to deposit public funds in this bank under the setup in the proposition. * * * * *
County courts cannot lawfully place public funds in banks except by complying with the county depository law. * * *"

Again considering these provisions, the court, in the case of Ralls County v. Commissioners of Finance, 66 S.W. (2d) 115, said;

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

and in Boone County v. Cantley, 51 S. W. (2d) 56:

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

It, of course, would be a meaningless and futile gesture to prescribe a method of selecting and qualifying county depositaries if county funds were not required to be placed in them once selected.

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Having determined that an account could not be maintained other than in a county depository, it, of course, and of necessity follows, that such funds could not be drawn upon by the county court without issuance of warrant. However, in any event, we do not believe that county funds can be paid out except through a warrant. It is stated in the case of Thompson v. St. Charles County, 227 Mo. 220, 1. c. 234:

"* * *Under our statutory scheme not a dollar can be paid from the treasury of a county on a claim except through a warrant. Such warrants are the only legal vouchers for the payment of public money. Our statutes contemplate that county warrants should be drawn in the name of the person presenting a claim for payment, and once a year county courts are required to make a full showing to the people in this regard.
* * *"

You next inquire whether or not the maintenance of such separate account and drawing on same without issuance of warrant would be grounds for an action to remove the county judges involved, there being no evidence of malfeasance. We note further from your opinion request the following:

"There have been accusations of misappropriation of these funds, although my investigation thus far does not disclose any such acts."

Section 4 of Article VII, of the Constitution of Missouri 1945, provides as follows:

"Except as provided in this Constitution, all officers not subject to impeachment shall be subject to removal from office in the manner and for the causes provided by law."

Section 106.220, RSMo 1949, specifies the grounds for removal in statutory proceedings as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such

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office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner provided in sections 106.230 to 106.290."

You will note that under the provisions of this section, in order for a violation or neglect of any official duty to constitute a ground for removal, it must be willful or fraudulent. The term "malfeasance" in the sense in which you have used it is defined in 26 Words and Phrases, Cumulative Supplement, pages 27 and 28 as follows:

"In determining whether officer was guilty of 'malfeasance in office', true motive or intent with which he acted must be considered, and act done with dishonest, oppressive, or corrupt motive, of which fear and favor may be considered elements, constitutes malfeasance, but if act proceeded from honest mistake or error, unusual circumstances must accompany transaction to constitute offense of corrupt or willful malfeasance. State v. Seitz, Del. Gen. Sess., 14 A. 2d 710, 711, 712, 1 Terry 572.

"A justice of the peace, remitting fines imposed by him after payment thereof or personally collecting such fines with evil intent or corrupt motive, is guilty of 'malfeasance in office,' but justice unlawfully remitting or collecting fines without such intent or motive is not guilty of such offense. Rev. Code, 1935, Secs. 4459, 5180, 5683(d), State v. Seitz, Del. Gen. Sess., 14 A. 2d 710, 711, 712, 1 Terry 572."

Under the provisions of Section 106.220 and the above noted definitions of malfeasance, we are of the opinion that maintaining such a fund outside of a county depository and drawing on same without issuance of warrant, absent the showing of fraud, misappropriation or willfulness, would not be grounds for removal from office.

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CONCLUSION

Therefore it is the opinion of this office that a county court cannot maintain an account comprised of county funds other than in a county depository selected and qualified as provided by law, nor draw on such funds without issuance of warrant.

We are further of the opinion that maintenance of such an account and drawing on same without issuance of warrant other than as provided by law would not be grounds for an action to remove the county judges from office, absent a showing of fraud or misappropriation of said funds.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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