

COUNTY TREASURER:
COUNTY FUNDS:
CANDIDATE'S FILING FEE:

(1) County treasurer should not com-
mingle public and personal funds in
same bank account (2) payment of can-
didate's filing fee by check drawn on
county depository is valid.



July 16, 1954

Honorable Melvin E. Griffin
Prosecuting Attorney
Clinton County
Plattsburg, Missouri

Dear Sir:

Reference is made to your request for an official opinion
of this department reading as follows:

"A question has arisen in my county, a
county of the third class, concerning the
treasurer's office, in which I would like
to have your opinion.

"It is reported to me, that our treasurer
uses the same fund and same type of checks
to pay both county debts and his personal
debts, in at least one bank of this county
in which he has an account.

"My question is as to the propriety of
drawing checks in this manner for both
county business and personal bills; and
as to whether the situation is altered by
his always having sufficient personal funds
on deposit in said account to cover what-
ever personal checks he may write.

"There is also, along this same line, the
further question as to whether there is a
valid filing as a candidate for re-election
to the office of treasurer, where the treas-
urer pays the \$5.00 filing fee required by
Sec. 120.350 of the Revised Statutes of
Missouri, 1949, by a check drawn on the
treasurer's fund rather than on his personal
account. In the event that he has not

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lawfully complied with said section, I am wondering just what the situation is or what procedure should be taken in filling the vacancy, as there are no other candidates of any party that have filed for the office.

* * * * *

The import of your letter is to the effect that the public official referred to therein has commingled personal and public funds in a bank account set up in a county depository and has and is drawing checks upon such account for both personal and public expenditures. It is upon this assumption that this opinion has been written. Checks drawn presumably are pursuant to the provisions of Section 110.240 RSMo 1949, requiring the issuance of checks drawn against such accounts upon the presentation of warrants duly executed by the county court.

We direct your attention to the provisions of Section 54.140 RSMo 1949, which reads as follows:

"It shall be the duty of the county treasurer to separate and divide the revenues of such county in his hands and as they come into his hands in compliance with the provision of law; and it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the court, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county court of each fund which several funds shall be known and designated as provided by law; and no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the court as aforesaid. Any county treasurer or other county officer, who shall fail or refuse to perform the duties required of him or them under the provisions of this section and chapters 136 to 154, RSMo 1949, and in the express manner provided and directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and not more than five

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hundred dollars, and in addition to such punishment, his office shall become vacant."
(Emphasis ours.)

It seems to us that a proper construction of this statute would prohibit the commingling of the personal funds of the county treasurer with the public funds coming into his hands by virtue of his official position. You will note that the statute quoted makes it a misdemeanor for such an official to fail or refuse to discharge the duties imposed upon him by the same statute, which is sufficiently broad to impose such penalty for failure to keep separate all of such public funds.

Aside from this statute the practice is certainly one to be condemned. The commingling of personal funds with those held in a fiduciary capacity, such as are those funds in the hands of the county treasurer, has within it such an inherent vice that we feel it should not be permitted. It is true that county treasurers in counties of the third class are required to furnish bonds for both county moneys and school moneys under the provisions of Sections 54.140 and 54.160 RSMo 1949, respectively. It is further true that the books of account of the treasurer are open to inspection by the county court or any member thereof at all times. The county treasurer is required to make semi-annual settlements with respect to all moneys of a public nature coming into his hands. Further, the county depositaries must make duplicate statements of the balance in the various funds deposited therein, supplying one to the county treasurer and one to the county clerk of such county. These are but additional safeguards to surround the disbursement and custody of public funds. They lend further strength to our belief that to handle the county and school moneys in any manner other than that specifically set forth by statutes relating thereto is not in accord with the public policy of the State and should not be permitted.

You have posed the further question with respect to the validity of the payment of the filing fee required by Section 120.350 RSMo 1949, when such payment is made by a check drawn on other than the personal account of the candidate. The statute mentioned reads in part as follows:

"1. Each candidate, except a candidate for a township office, previous to filing declaration papers, as in sections 120.300 to 120.650 prescribed, shall pay to the treasurer of the state or county central

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committee of the political party upon whose ticket he seeks nomination a certain sum of money, as follows:

* * * * *

"(2) To the treasurer of the county central committee: Five dollars if he is a candidate for state representative or any county office.

"2. The candidate shall take a receipt therefor and file such receipt with his declaration papers. The sums of money so paid by the several candidates shall be evidence of their good faith in filing their declaration papers and shall be used as an expense fund by the several political parties upon whose tickets the various candidates seek nomination."

From this statute it is apparent that its purpose is to provide funds for the use of the various committees of the political parties mentioned therein. Therefore, if the check issued in the manner referred to in your letter is paid by the bank upon which drawn, it amounts to a compliance with the terms of Section 120.350 RSMo 1949, even though, as between the county court and the officer, the drawing of such check could possibly amount to a misappropriation of a portion of the public funds in the custody of such official. As further bearing upon this subject, we direct your attention to a previous official opinion of this department delivered under date of June 4, 1954 to the Honorable C. D. Hamilton, State Representative, Ralls County, a copy of which is enclosed herewith.

CONCLUSION

In the premises we are of the opinion:

(1) That a county treasurer in a county of the third class should not commingle personal funds with public funds coming into his hands by virtue of his office; and,

(2) That any payment of the sum of \$5.00 to the treasurer of a county central committee by a candidate for a county office is a complete compliance with the provisions of Section

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120.350 RSMo 1949, and such candidate is thereupon entitled to have his name placed on the primary ballot if otherwise qualified.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton
Attorney General

WFB/vtl

Enclosure: 6-4-54 to C. D. Hamilton