

COUNTY COLLECTORS: When county consents to giving of
COUNTY COURT: surety bond by county collector, county
SURETY BOND: must pay premiums on such bond coming
COLLECTOR'S BOND: due during entire term of collector.

August 21, 1961



Honorable John M. Rice
Prosecuting Attorney
Newton County
Neosho, Missouri

Dear Sir:

This is in answer to your letter dated March 29, 1961, requesting an opinion of this office, which request reads as follows:

"Mr. Curtis Green, our county collector, and Don Snyder, who is currently with a group of auditors who are working in Newton County auditing the records of county officers, mentioned to you at Springfield the situation concerning the collector's bond; and I am writing this letter to request your official opinion on such a situation and to set out the facts involved.

"When the present county collector, Mr. Curtis Green, was elected to office in 1958 he secured a surety bond in the amount of \$180,411.38 from the United States Fidelity and Guaranty Company written for a term of four years. This bond was approved by the court and the court agreed to pay the premium on the bond. I am enclosing herewith a photostat copy of the court's minutes. The county paid the premium of \$1,152.06 for two years. On January 7, 1961 the present county court refused to pay the premium for the current year.

"The premium on these bonds can be paid in advance for the four year term at a

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substantial reduction in premium, or can be paid annually; however, in either case the bond is written for the full four year term. We request your opinion as to whether or not the county is obligated under the above facts to pay the premium on the collector's bond for the remaining two years of his office.

"I have read an opinion from the office of the Attorney General dated January 11, 1940 written to Henry Lamkin, Prosecuting Attorney of Callaway County, Missouri, and an opinion dated December 20, 1937 addressed to Mr. Conn Withers, Prosecuting Attorney, Clay County, Missouri, and an opinion dated April 16, 1956 addressed to Mr. Joe Collins, Prosecuting Attorney, Cedar County, Missouri; all of which opinions indicate that the county is liable for the payment of such bond premium. I have also read an opinion dated June 20, 1951 addressed to Hon. John Downs, Prosecuting Attorney, Buchanan County, Missouri, which holds the court is not authorized to budget and pay the premium of the county collector's bond for a period beyond the current year. I am calling these opinions to your attention since it would appear that there is some conflict and we would very much appreciate your current opinion on our situation."

In addition, you have furnished a copy of the Newton County Court record dated February 6, 1959, which reads as follows:

"In the matter of J. Curtis Green, County Collector, -Bond for 'Collector of Revenue' approved unanimously by the Court. In the matter of J. Curtis Green, payment of the Bond, approved by O. M. Prater, presiding Judge, and Lewis Cope, Western Judge, and rejected by V. H. Hardy, Eastern Judge."

The question presented, therefore, is: After the county court has approved the county collector's surety bond and paid the premium for two years, is it then obligated to pay the premiums on the bond for the last two years of the county collector's term.

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Section 107.070, RSMo 1959, provides as follows:

"Whenever * * * any officer of any county of this state * * * shall be required by law of this state * * * or by any order of any court in this state, to enter into any official bond * * * he may elect, with the consent and approval of the governing body of such * * * county * * * to enter into a surety bond, or bonds, with a surety company or surety companies, authorized to do business in the state of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

The order of the county court of February 6, 1959, above referred to, shows that the bond of the county collector received the "consent and approval" of the county court. The statute further provides that "such surety bond shall be paid by the public body protected thereby."

The plain words of the statute are reinforced by the language of the Supreme Court in *Motley v. Callaway County*, 347 Mo. 1018, 149 SW2d 875, l.c. 877:

"So when consent and approval for the officer to purchase such a bond at public expense was given in advance by 'the public body protected,' it was required to pay the cost."

The court, further on in the opinion, said, l.c. 877:

"The 1937 Act only authorized the county to make an agreement for this type of bond, and, if it did so in advance, to pay for it when it was furnished."

It therefore appears clear from the statute and the *Motley* case construing it that the county is obligated to pay the premium on the bond. The *Motley* case, however, does not expressly consider the effect of the county budget law under Chapter 50, RSMo 1959, or constitutional provisions relating thereto. It therefore appears that to fully answer your inquiry those elements must be considered.

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Section 26(a) of Article VI of the Constitution of Missouri, 1945, provides:

"No county * * * shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years * * *."

It is therefore apparent that with relation to your problem the question then presented is whether or not the liability for the bond premium is an indebtedness within the meaning of the constitutional prohibition of Section 26(a) of Article VI of the Constitution. A number of cases in Missouri have established the principle that where a contract is wholly executory and the pecuniary liability does not become fixed until the service has been rendered from month to month or year to year, then there is no "indebtedness" within the meaning of the above-mentioned constitutional provision. This principle is established by *Saleno v. City of Neosho*, 127 Mo. 627, 30 SW 190; *Tate v. School Dist. No. 11 of Gentry County*, 23 SW2d 1013, 1023. The Supreme Court, in *Kansas City Power and Light Co. v. Town of Carrollton*, 142 SW2d 849, 1.c. 853, explained the rule above referred to in the following language:

"What those cases do hold is that such an installment contract does not create a debt for the aggregate sum which may become due over the whole duration of the contract. In other words, such a contract does not contravene said section of the Constitution, even though the aggregate installments exceed five per cent of taxable property, unless one or more of the yearly installments exceeds the yearly revenue. But each installment becomes a debt as it falls due and, if it exceeds the revenue provided for the year in which it falls due, there is no way in which it can be paid except by a levy under said Section 12."

Under this doctrine, where the county collector might vacate his office or die, the bond premium would not be earned by the bonding company, and hence would not become a debt within the meaning of the Constitution until it had actually been earned. Therefore,

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the payment of the bond premium for the year 1961 would not violate the prohibition against "indebtedness" within the meaning of Section 26(a) of Article VI of the Constitution of Missouri.

It therefore appears that the Newton County Court did both approve and consent to the county collector's bond, and consequently the county is liable for the payments of the annual installments of the bond premium on the county collector's bond under Section 107.070, supra.

Respecting your inquiry concerning prior opinions of this office, we wish to advise you that the opinions dated June 20, 1951 to Honorable John E. Downs, and January 12, 1948 to Honorable Ralph Baird, are withdrawn.

CONCLUSION

It is the opinion of this department that Newton County is liable for the payment of the annual premiums on the surety bond of the County Collector of Newton County for the remaining two years of his term.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

JGS:ml