

COUNTY DEPOSITARIES:

Section 110.130, RSMo 1959, does not require county depositaries to be located within the county seat.

Opinion No. 163

July 19, 1963



Honorable Harold L. Volkmer
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Mr. Volkmer:

This opinion is given in response to your letter of April 1, 1963, requesting an official opinion of this office. You inquire:

"* * *whether or not the County Depository of County funds must be located in the County seat."

Historically the "county depositaries law", now Sections 110.130 - 110.260, RSMo 1959, has never provided that the county depositaries must be located within the county seat. Section 1 of the "county depositaries law" as originally enacted provided:

"It shall be the duty of the county court of each county in this state, at the February term thereof in the year 1891, and every two years thereafter, to receive sealed proposals from any banking corporation, association or individual banker in such county that may desire to be selected as the depository of the funds of said county." (Emphasis Added) Missouri Laws, 1889, p. 81.

See also historical note, Section 110.130, VAMS 1949, at page 149.

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In 1959 the Legislature enacted several changes in the county depositaries law. Section 110.130, RSMo 1959, as amended, as far as relevant to this discussion now provides:

"Subject to the provisions of section 110.030 the county court of each county in this state, at the May term thereof, in each odd-numbered year, shall receive proposals from banking corporations, or associations at the county seat of the county which desire to be selected as the depositaries of the funds of the county.
* * *" (Emphasis Added)

The particular question to be resolved herein is whether the phrase "at the county seat" inserted into Section 110.130, RSMo 1959, changes the law so as to limit the selection of county depositaries to those banks located within the county seat.

On the face of the present "county depositaries law" read as a whole, the phrase, "at the county seat" of Section 110.130 refers to where the proposals shall be received and not where the banking corporations or associations must be located. The "county depositaries law" encompasses Sections 110.130 to 110.260 inclusive. Reference to the location of banks eligible to be county depositaries is made in Sections 110.140, 110.180 and by reference in 110.190. In Sections 110.140 and 110.180 the location is described as "in the county". It is impossible to read into these sections the word "seat" after "county" without substantially changing the statute. The phrase "at the county seat" used in Section 110.130 can logically and grammatically be read as describing the location where the county court shall receive bids. In our opinion there is no ambiguity in these provisions and accordingly no right to construe them. Rules of construction are not to be used to create ambiguities, but indeed their use is dependent upon the existence of an ambiguity. Steggall v. Morris, Mo., 258 SW2d 577, 582; 50 Am. Jur., Statutes, §225.

Moreover, even if an ambiguity can be found to exist in the use of the phrase "at the county seat", application of the rules of construction fortify the conclusion supra, viz., that the phrase does not limit the banking corporations or associations eligible for selection as county depositary to those located within the county seat.

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The phrase, "at the county seat", was inserted into Section 110.130 by Senate Bill No. 77, of the 70th General Assembly. At page 7 of the re-perfected Senate Bill No. 77 the following comment by the legislative revisor is found:

"* * *(The) words 'at the county seat of the county' limiting county depositaries to banks so located is inserted because §110.220 requires depositaries to maintain office at county seat and this another bank cannot do under §§362.105 and 363.170, RSMo."

Although the purpose of the revisor in inserting the phrase, "at the county seat", is clear, the revisor's purpose cannot be identified with the intention of the Legislature. No matter how clearly expressed a revisor's comments are not determinative of legislative intent, but are a mere indicia of legislative intent. The meaning of statutes cannot be determined by "testimony" of the draftsman or even of the individual legislators. The intention of the Legislature controls the meaning of statutes, and when not expressly manifest on the face of the statute it must be determined by applying the established rules of statutory construction. It is permissible in construing an ambiguous statute to consider expressions of the individual legislators in debate or the comments of the draftsmen or revisor, yet such guides are not the most trustworthy and at best are entitled to limited reliance. State v. Board of Curators, Mo., 188 SW 128, 132; State v. Osburn, Mo., 147 SW2d 1065, 1068; State v. State Highway Commission, Mo., 42 SW2d 196, 202. At the risk of giving undue dignity to a relatively minor indication of legislative intent, we shall discuss at some length the above quoted comment.

The revisor's comment expresses the conclusion that under the then applicable law, due to the prohibitions against branch banking (Sections 362.105 and 363.170), a county depositary would necessarily have to be located at the county seat in order to meet the requirements of Section 110.220, RSMo 1949. (This statute required county depositaries to provide for payment at the county seat of all checks drawn on county funds.) The revisor reasoned: Section 110.220 requires all county depositaries to make payment of checks at the county seat; payment can only be made at the drawee bank or a branch thereof; but, branch

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banks are prohibited by Sections 362.105 and 363.170; therefore, only banks located within the county seat can be county depositaries. The revisor inserted the phrase, "at the county seat", and removed the phrase, "in such county". In other words, it appears that the intention of the revisor was to reword Section 110.130 to conform to the effect of Section 110.220 in the light of Sections 362.105 and 363.170, as he thought it to be.

The revisor's comment cannot be used to construe Section 110.130, RSMo 1959, because the premise of his reasoning is false in two respects. First, in concluding Section 110.220 in connection with Sections 362.105 and 363.170 limits county depositaries to those located within the county seat, the revisor overlooked the second proviso of Section 110.220 which empowered the county court to waive the requirement of payment of checks at the county seat. In other words banks other than those within the county seat could have complied with Section 110.220 without violating the prohibitions against branch banking. Second, the revisor's conclusion is further false because it is premised upon a no longer existent statute. Section 110.220, the premise of revisor's reasoning, was repealed by the very same act that amended Section 110.130, viz., Missouri Laws 1959, Senate Bill No. 77.

We are completely dissuaded from giving any weight to the revisor's comment here due to the limited reliance placed upon such extrinsic aids to construction and, even more dissuading, its false premises.

Even if we were to give weight to the revisor's comment as an indicia of legislative intent, it is outweighed by contrary indicia when further rules of statutory construction are applied. Were we to construe the phrase, "at the county seat", of Section 110.130, RSMo 1959, as requiring the county depositaries to be a banking corporation or association located within the county seat then a conflict between the several provisions of Chapter 110 would exist. The Section immediately subsequent to Section 110.130, Section 110.140, RSMo 1959 (setting out the procedures for bidders), provides, "Any banking corporation or association in the county desiring to bid shall deliver * * * a sealed proposal", etc. See also Section 110.180, RSMo 1959. Sections 110.140 and 110.180 clearly express that any bank in the county can be a county depositary. Statutes are not to be construed as in conflict if any reasonable construction harmonizing the provisions can be made. Sections 110.130, 110.140 and 110.180 as

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amended were enacted together. Missouri Laws 1959, Senate Bill No. 77. We cannot presume the Legislature intended them to be in conflict.

"* * * Experience indicates that a legislature does not deliberately enact inconsistent provisions when it is cognizant of them both, without expressly recognizing the inconsistency. Thus, in the absence of any recognition of an inconsistency by repealing or amending, it is reasonable to assume that the legislative policy embodied in provisions enacted at the same time and relating to the same subject matter or in provisions the later of which refers to the prior and both of which concern the same subject matter is the same and that the provisions are consistent. * * *" (Emphasis Added) Sutherland Statutory Construction, 3rd Ed., Vol. 2, §5205, p. 544.

That the phrase, "at the county seat", designates the place that proposals shall be received is a reasonable reading of the statute logically and legally and by such construction conflict is avoided and harmony resounds between the sections of Chapter 110. We must so read the statute.

Still another rule of construction fortifies our conclusion. Similar phrases used repeatedly in the same statute or similar statutes are presumed to have the same meaning. Conversely where the language used in one section is different from that used in other sections of the same chapter and from that used in a prior statute, it is presumed that such language is used with a different intent. Wine v. Commonwealth, Mass., 17 NE2d 545[6].

Several sections of Chapter 110, RSMo 1959, provide that the depositary shall be within the same political subdivision as the institution or subdivision it will serve. See for example the phrase, "in the city, town or county in which the institutions are located", of Section 110.070 and the phrase, "in the city", of Section 110.080. Also see Section 110.040 and Section 110.180 where the phrase is "in the county." The former provisions of Section 110.130 used the phrase "in such county." This last mentioned provision was construed by the Supreme Court of Missouri as requiring the depositary to be a resident

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of the same county. Wright County ex rel. Elk Creek Tp. v. Farmers' & Merchants' Bank, Mo., 30 SW2d 32, 34.

The phrase, "in the county", having been frequently used and indeed, judicially construed, clearly if the Legislature had intended to require the county depository to be located within the county seat it would have used the phrase, "in the county seat." We therefore must infer that the different phrase, "at the county seat", indicates a different intent, that the phrase was not intended to limit the selection of county depositories to those banks located within the county seat.

In construing a statute, consideration ought to be given to the purpose of the legislation, and the construction given the statute should accord with that purpose. State v. Mayfield, Mo., 281 SW2d 295, 297; State v. Bern, Mo. App., 322 SW2d 175, 177; 82 C.J.S., Statutes, §323. To construe Section 110.130, RSMo 1959, as limiting the selection of county depositories to those banks located within the county seat would be contrary to the purpose of the legislation.

In summary, the language of Section 110.130, RSMo 1959, read in context with the whole "county depository law," fortified by the concurring weight of applicable rules of statutory construction compels the conclusion that the phrase, "at the county seat", does not limit the selection of county depositories to those banking corporations or associations located within the county seat.

CONCLUSION

Therefore, it is the opinion of this office that a county depository of county funds is not required to be located within the county seat.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Louis C. DeFco, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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