

COUNTY COLLECTOR:

Collector of St. Louis County does not have the power to invest County funds in his possession.

ST. LOUIS COUNTY:

December 5, 1963



Opinion No. 400

Honorable Peter J. J. Rabbitt
State Representative
9th District, St. Louis County
7 North Seventh Street
St. Louis 1, Missouri

Dear Mr. Rabbitt:

This opinion is rendered in response to your request of October 3, 1963, for an official opinion of this office. You inquire:

"Can the collector of St. Louis County legally invest any of the funds under his control in United States Government Securities, the income from which would accrue to the benefit of St. Louis County alone."

We understand your inquiry as limited to the investment of county funds and not including the investment of state, municipal or other funds in the hands of the collector. Clearly only county funds are to be invested if the income is to "accrue to the benefit of St. Louis County alone".

County officers have limited powers. They possess only such powers as have been expressly granted to them by statute or which are necessarily implied from the powers expressly granted to them.

"The policy of the State of Missouri . . . is clearly opposed to the view that any officer, such as a collector can bind the county save and except by such performance

Honorable Peter J. J. Rabbitt

of incumbent duties as prescribed by statute." State of Missouri ex rel. Brewer v. Federal Lead Co., 265 Fed. 305.

See also: Lamar Tp. v. City of Lamar, Mo., 169 SW 12, 15; King v. Maries Co., Mo., 249 SW 418.

Also, since St. Louis County is a charter county, the officers of St. Louis County are "obliged to look to the charter for (their) powers, and acts beyond the powers granted or necessarily implied therefrom are void". Schmoll v. Housing Authority of St. Louis County, Mo., 321 SW2d 494, 498.

Section 44.10 of the St. Louis County Charter prescribes the duties of the collector and provides:

"The Collector shall be responsible for the collection of all real and personal property, merchant and manufacturer, railroad, utility or other taxes for state, school, county or other purposes, and he shall perform such other duties as are provided by law or ordinance."

Nowhere in the state statutes, St. Louis County Charter or Ordinances of St. Louis County do we find any express grant of power to the Collector of St. Louis County to invest funds in his possession.

Moreover, the Ordinances of St. Louis County clearly manifest an intent that the collector is not to invest county funds in his possession. Section 303.010, St. Louis County Ordinances, 1961-62, provides:

"Any officer, employee, or agent of St. Louis County who shall receive any moneys belonging to the County, or any moneys not belonging to the County, which may be obtained by him by virtue of, or under color of such office or employment, which are to be held, paid out, or transmitted by the county or any officer, or agent thereof, shall promptly deposit all such moneys in the County Treasury; * * *" (Emphasis added)

Honorable Peter J. J. Rabbitt

The word "promptly" has been defined as "immediately, given without delay or hesitation". Mercantile-Commerce Bank and Trust Co. v. Kieselhorst Co., Mo., 164 SW2d 342, 349; Black's Law Dictionary, 4th Ed., page 1379. For the county collector to invest county funds coming into his hands would be repugnant to his duty to deposit same without delay in the county treasury.

That county funds are not to be invested by the collector is further manifest by the St. Louis County Ordinance which makes the county treasurer responsible for the custody and investment of the county's funds. Section 303.030, St. Louis County Ordinances, 1961-62, provides:

"The County Treasurer shall be responsible for the custody of the County's funds and for the investment of any surplus funds which may accumulate from time to time in the County Treasury as provided by law for the investment of such funds. The Treasurer shall at all times keep the maximum amount of county surplus funds invested in securities so as to obtain the greatest return possible commensurate with the requirements of the law and sound investment practices."

We also note that Sections 303.090 to 303.110 of the Ordinances provide for the establishment of a County Fund Investment Advisory Committee to advise the county treasurer and council.

In summary, no statute or ordinance expressly authorizes the collector of St. Louis County to invest funds in his possession. Moreover, the design manifest by the Ordinances of St. Louis County is that county funds coming into the hands of the collector must be deposited without delay into the county treasury and that the treasurer shall be custodian and invest surplus county funds. Investment of county funds by the collector would be repugnant to this ordained scheme of handling county funds.

CONCLUSION

From the foregoing considerations, it is the opinion of this office that the Collector of St. Louis County does not have

Honorable Peter J. J. Rabbitt

the power to invest County funds in his possession.

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

Yours very truly,

THOMAS F. EAGLETON
Attorney General

LCD:lt