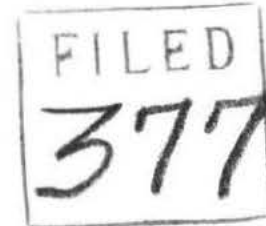


COUNTY COURTS: The County Court of Ste. Genevieve County
under Section 110.180, RSMo 1959, may
COUNTY DEPOSITARIES: designate an additional bank as a deposi-
tary at a time other than at the May term
COUNTY FUNDS: in an odd-numbered year.

Opinion No. 377

December 9, 1964



Honorable Charles A. Weber
Prosecuting Attorney
Ste. Genevieve County
Ste. Genevieve, Missouri 63670

Dear Mr. Weber:

This is in answer to your request for an official opinion of this office, which asks:

"May the County Court of Ste. Genevieve County, prior to the May Term, designate an additional local bank as a depository of county funds?"

Section 110.130, RSMo, provides the manner in which county depositories are to be selected. Subsection 1 of this Section reads in part as follows:

"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 desires to be selected as the depositories of the funds of the county."

Section 110.030, RSMo, reads as follows:

"The various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds to the best bidder or bidders for the whole or any part of any of the public funds of the character referred

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to in section 110.010 shall be applicable only if and when, at the time of said advertisement and award, it shall be lawful for banking institutions to pay interest upon demand deposits, in which event such applicable statutory provisions shall be complied with; but if, at the time of the advertisement for bids or the receipt of bids or the award of funds, it shall be unlawful for depositary banks and trust companies to pay interest upon such demand deposits, the award or awards of such funds shall be made in each case, without bids and without requiring the payment of any bonus or interest, by the authority or authorities which are by statute empowered to make the awards of such funds upon bids."

Under federal regulations (and Section 362.385, RSMo) it is unlawful for banks to pay interest upon demand deposits. In this situation, Section 110.030 expressly governs, and by its terms suspends all statutory provisions for advertisements for bids and lettings to the highest bidder. And since the operation of Section 110.130, RSMo is expressly made subject to the provisions of Section 110.030, this can only mean that Section 110.130, which relates to the advertisement for and the receipt of bids, is not presently applicable. The designated time for the receipt of bids (the May term in each odd-numbered year) is "in relation" to the advertisement for and the receipt of bids, and is not severable from the remaining provisions of Section 110.130. Hence, the County Court is not required to make the award of county funds as provided in Section 110.130.

Section 110.180, RSMo, provides as follows:

"If for any reason the banking corporations or associations in any county fail or refuse to submit proposals to act as county depositaries as provided in section 110.140, the county court may deposit the funds of the county with any one or more of the banking corporations, or associations in the county or adjoining counties, in the sums or amounts, and for the period of time, the court deems advisable, at the rate of interest, not less than one and one-half percent, as is agreed upon by the court and the banking concern receiving the deposit; the interest to be computed upon the daily balances due the county, as provided in section 110.150.

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Any bank or banking concern agreeing to accept deposits under this section shall provide security as required by section 110.010."

Section 110.140, RSMo, prescribes the procedure for bidding. Inasmuch as it is now legally impossible for banks to submit proposals as provided in Section 110.140, RSMo, the result (for that reason) is that they have "failed" to do so, and therefore Section 110.180, RSMo, is brought into operation. This section authorizes the county court to "deposit the funds of the county with any one or more of the banking corporations . . . for the period of time, the court deems advisable" (but without requiring the payment of interest).

The mere fact that the court has heretofore deposited funds in certain designated banks does not, of itself, under the provisions of Section 110.180, RSMo, preclude the court from designating an additional bank to receive other funds as a county depository at a time other than the May term in an odd-numbered year.

CONCLUSION

Therefore, it is the opinion of this office that the County Court of Ste. Genevieve County, under Section 110.180, RSMo 1959, may designate an additional bank as a depository of county funds at a time other than at the May term in an odd-numbered year.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas E. Eichhorst.

Very truly yours,


THOMAS F. EAGLETON
Attorney General

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