COUNTY COURT:
COUNTIES:
COUNTY COLLECTOR:
BONDS:

1. The county court in a third or fourth class county is not required to pay any of the cost of the surety bond for the county collectors. 2. The whole cost of such surety bond must be paid by the county where, (1) the county collector elects to enter into a surety bond with a surety company authorized to do business in the state, and (2) the county court has given its consent to be liable and approves the bond. 3. The county court may not participate in a partial payment of the cost of the surety bond for the county collector.

OPINION NO. 461

December 20, 1971

FILED
461

Honorable J. F. Patterson
Missouri Senate, 25th District
112 West 18th Street
Caruthersville, Missouri 63830

Dear Senator Patterson:

This is in response to your request for our opinion concerning the payment of the cost of a county collector's surety bond by the county court in a third or fourth class county. Specifically you have asked:

> "1. Is the county court of a third or fourth class county required to pay a portion of the cost of surety bond for the county collector?
>
> "2. Is the county court prohibited by law from paying a portion or all of the cost of bond for the county collector?
>
> "3. If the law is not clear on this matter, does the county court have an option to participate partly or in whole in the payment of the bond for the county collector?"

Every collector of the revenue in third and fourth class counties of this state, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, such bond being conditional on his faithful and punctual performance of all the duties of the office of collector according to law. See Section 52.020, RSMo 1969.

Section 107.070 clearly states that this county officer may elect, with the consent and approval of the governing body of the county, which is the county court, to enter into a surety bond with an authorized surety company and then the cost of every such surety bond shall be paid by the public body protected thereby. The relevant language of Section 107.070, RSMo 1969 is as follows:

> "Whenever any . . . officer of any county of this state . . . shall be required by law of this state . . . to enter into any official bond, or other 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."

In Berry v. Linn County, 355 Mo. 191, 195 S.W.2d 502 (1946), the court held that the purpose of this section as it applies to counties, is that the cost of the surety company bond given by a county officer shall not be imposed on the county unless the county agrees. See also Boatright v. Saline County, 350 Mo. 945, 169 S.W.2d 371 (1943).

This section discloses the legislative intent that the county should be liable for the premium only where the county court consents to such liability and approves the bond. Cox v. Polk County, 173 S.W.2d 680 (Mo. 1943); Motley v. Callaway County, 347 Mo. 1018, 149 S.W.2d 875 (1941).

It is the opinion of this office that a county court in a third or fourth class county is not required to pay all or any portion of the cost of the surety bond for the county collector. However, the whole cost of this surety bond or bonds must be paid by the public body protected thereby where, (1) the county collector elects 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 (2) the county court consents to such liability and approves the bond. Section 107.070, RSMo 1969; Berry v. Linn County, supra; Cox v. Polk County, supra; Motley v. Callaway County, supra; opinion of the Attorney General, No. 245, Blanck, 8-5-65; opinion of the Attorney General, No. 75, Rice, 8-21-61; opinion of the Attorney General, No. 18, Collins, 4-16-56.

The question now becomes, "Does the county court have an option to participate in the partial payment of the cost of the surety bond for the county collector?"

It is the opinion of this office that the county court may not participate in the partial payment of the cost of the surety bond for the county collector.

This controlling statute, Section 107.070, RSMo 1969, expressly grants the power to the county court to give its consent and approval or the power to withhold its consent and approval. The result is that the people protected by the bond will be liable for the whole cost if the court's consent and approval is given, or the county will incur no liability if the court's consent and approval is withheld. There is no expressed provision authorizing the county court to participate in partial payment of the cost of this surety bond. It was well settled by Lancaster v. The County of Atchison, 352 Mo. 1039, 180 S.W.2d 706, 708 (banc 1944) that counties:

> ". . .'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. See State ex rel. City of Blue Springs v. McWilliams et al., 335 Mo. 816, 74 S.W.2d 363; State ex rel. City of Hannibal v. Smith, State Auditor, 335 Mo. 825, 74 S.W.2d 367, 372."

The court in Lancaster on page 709 went on to state:

> ". . . Where the statute . . .'limits the doing of a particular thing in a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done.' Keane v. Strodtman, 323 Mo. 161, 18 S.W.2d 896, 898. See, also, Dougherty v. Excelsior Springs, 110 Mo.App. 623, 85 S.W. 112; Taylor v. Dimmitt, 326 Mo. 330, 78 S.W.2d 841, 98 A.L.R. 995. In other words, there can never be an implied power given a county or other public corporation when there is an express power."

CONCLUSION

It is the opinion of this office that:

1. The county court in a third or fourth class county is not required to pay any of the cost of the surety bond for the county collector.

2. The whole cost of such surety bond must be paid by the county where, (1) the county collector elects to enter into a surety bond with a surety company authorized to do business in the state, and (2) the county court has given its consent to be liable and approves the bond.

3. The county court may not participate in a partial payment of the cost of the surety bond for the county collector.

The foregoing opinion which I hereby approve was prepared by my assistant, Richard S. Paden.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 245
8-5-65, Blanck

Op. No. 75
8-21-61, Rice

Op. No. 18
4-16-56, Collins