SCHOOL DISTRICTS: )
SCHOOL MONEYS: )
DEPOSITORIES: )

Board of education of school district required to select a depository in the same manner as county courts, and treasurer of school district is liable for loss of funds not deposited in such depository.

7-19

July 18, 1934.

FILED
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Mr. E. A. Allen
Raymore, Missouri

Dear Mr. Allen:

This Department acknowledges receipt of your letter dated July 7, 1934, as follows:

> "I have just been elected Treasurer of Raymore Consolidated school, and as such officer required to furnish a bond in the penal sum of Ten Thousand Dollars.
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> "I find that it has been, and still is, the custom to deposit all school funds, without security, in the bank of Raymore on time or open accounts. So long as the bank remains solvent no problem arises, but in case of failure the question of responsibility for the school funds presents itself.
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> "I write to ask what the responsibility of the Treasurer for funds deposited in a failed bank, if deposit is made in conformity with a resolution of the School Board. Does the School District accept the bank as the custodian of funds deposited and relieve the bond of the Treasurer?
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> "Inasmuch as the situation is immediate, request is respectfully made that an opinion be furnished at your earliest convenience."

1. Section 9335, R. S. Mo. 1929, provides as follows:

> "The treasurer, before entering upon the discharge of his duties as such, shall enter into a bond to the state of Missouri, with two or more sureties, to be approved by the board, conditioned that he will render a faithful and just account of all money that may come into his hands as such treasurer, and otherwise perform the duties of his office according to law--said bond to be filed with the secretary of the board; and thereafter said treasurer shall be the custodian of all school moneys derived from taxation for school purposes in said district until paid out on the order of the board, and on breach of the conditions of said bond, the secretary of such board, or any freeholder, may cause suit to be brought thereon, which suit shall be prosecuted in the name of the state of Missouri, at the relation and to the use of the proper school district."

Section 9338, R. S. Mo. 1929, having reference to the treasurer of the board of education of any town, city or consolidated school district, in part reads:

> "* * * * *; and at the expiration of his term of office said treasurer shall deliver over to his successor in office all books and papers, with all moneys or other property in his hands and also all orders he may have redeemed since his last annual settlement with the board of education and with the county clerk, and take the duplicate receipts of his successor therefor, one of which he shall deposit with the secretary of said board of education and the other with the clerk of said county court."

Section 9362, R. S. Mo. 1929, is as follows:

> "The board of education of city, town and consolidated school districts in this state shall select depositories for the funds of such school district in the same manner as is provided by law for the selection of county depositories; and they may loan any moneys held for the payment of outstanding bonds upon the same terms and upon the same conditions as provided by law for loaning county and school moneys."

Turning then to the laws governing the selection of depositories by county courts, we assume that your board of education has complied with all of the provisions of the statute relative to the selection of the depository, that is, that the board of education has proceeded under the provisions of Section 12184, Revised Statutes of Missouri, 1929, by advertising for bids for the school funds and no bids were received by the board from the banking corporations, associations or individual bankers in your county and that all of the banking institutions in your county have failed to proceed under Sections 12184, 12185, 12186 and 12187, R. S. Mo. 1929, to submit bids for such school funds and the giving of a bond, or bonds, as a depository for such funds.

In case the board has complied with the sections of the statute above mentioned, and no bids have been submitted, then, in that event, the board may go to Section 12189, R. S. Mo. 1929, for the selection of a depository; which section is as follows:

> "If for any reason the banking corporations, associations or individual bankers in any county shall fail or refuse to submit proposals to act as county depositaries as provided in section 12185, then, and in that case, the county court shall have power to deposit the funds of the county with any one or more of the banking corporations, associations or individual bankers in the county or adjoining counties, in such sums or amounts, and for such period of time, as

> the court may deem advisable, at such rate of interest, not less than one and one-half per centum, as may be agreed upon by the court and the banker or banking concern receiving the deposit; said interest to be computed upon the daily balances due the county, as provided in section 12186, and any bank or banking concern agreeing to accept deposits under the provisions of this section shall execute a bond in manner and form as prescribed in section 12187, with all the conditions therein mentioned, the penalty of such bond or bonds to be not less than the total amount of the county funds to be deposited with such bank or banking concern."

The duty under the law of selecting a depository under Section 9362, above set out, devolves on the board of education and it should first proceed under the first four sections of Article 2, Chapter 85, Revised Statutes of Missouri, 1929, being Sections 12184, 12185, 12186 and 12187, and then if there are no bids submitted by the banks the board should then proceed under Section 12189 for guidance, and under such section the board shall have power to deposit its school funds with any one or more of the banking corporations, associations or individual bankers in the county or adjoining counties et cetera, that are willing to comply with this section by paying the required interest, not less than one and one-half per cent. to be computed upon daily balances, and by such depository executing the bond in manner and form as prescribed in Section 12187.

2. Coming now to the question of the liability of the treasurer of the board on his official bond in the event of the failure of the board to select a depository and a consequent loss of the funds in the hands of the treasurer:

In the case of Glaze v. Shumard, 54 S. W. (2d) 726 l. c. 728, it is said:

> "It is well settled that a public officer is an insurer of public funds which he has lawfully received, unless the legislature has provided otherwise."

As was said by the Supreme Court in the case of City of Fayette v. Silvey, 290 S. W. 1019, l. c. 1021:

> "* * *The general rule, which is the rule in this state, is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession. Shelton v. State, 53 Ind. 331, 21 Am. Rep. 197; Thomssen v. County, 63 Neb. 777, 89 N. W. 389, 57 L. R. A. 303. He is therefore liable for losses which occur even without his fault. Shelton v. State, supra. This standard of liability is bottomed on public policy. University City v. Schall, 275 Mo. 667, 205 S. W. 631.
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> "In the last case cited, our Supreme Court, speaking through Blair, P. J., applied this general rule to a city treasurer, into whose hands the general funds of the city had passed, finding that the mayor and aldermen had directed the funds placed to the credit of the city treasurer in a certain trust company, which later failed. The treasurer died, and the suit was instituted against the administrator of his estate. The estate was held liable under the general bond, notwithstanding the fact that the funds had been so deposited in the trust company at the direction of the board of aldermen."

In the case of Bragg City Special Road District v. Johnson, 20 S. W. (2d) 22, l. c. 24, 66 A. L. R. 1053, the Missouri Supreme Court in this leading case said:

> "The ruling in the University City Case was made in recognition of the rule followed in this State, and generally followed that the liability of the treasurer of a public cor-

poration for its funds coming into his hands is absolute. State ex rel. v. Powell, 67 Mo. 395; 29 Am. Rep. 512; State ex rel. v. Moore 74 Mo. 413; 41 Am. Rep. 322; County of Mecklenburg v. Beales, 111 Va. 691, 69 S. E. 1032, L. R. A., (N. S.) 285. The rule is one founded upon considerations of public policy."

In the case of Everton Special Road District v. Bank of Everton, 55 S. W. 335, l. c. 336, the Supreme Court stated:

"In selecting a county depository the steps may be all regular up to the execution of a bond by the depository and then if the bond given does not substantially comply with the requirements of the statute, the depository selected is not the legal depository."

In the case of Huntsville Trust Company v. Noel, 12 S. W. (2d) 751, l. c. 754, the Supreme Court said:

"As heretofore stated, all county funds are required by law to be deposited in a county depository. The officers of the county charged with duties relating to the deposit of such funds for safe keeping are agents of limited powers, and as such they have no authority to deposit these public moneys with any other than a county depository. Now a bank or trust company does not become a county depository merely by being designated as such in an order of the county court; it must qualify as a depository by giving the security prescribed by section 9585. If, therefore, the trust company had not so qualified on June 27, 1927, the deposit of the county funds with it was unlawful; and it, in receiving such funds under color of being a county depository, wrongfully obtained possession of them. The county moneys so obtained thereupon became, in the hands of the trust company, a trust fund by operation of law. These funds entered into, became commingled with, and to that extent augmented, the trust company's assets as a whole. Such assets may therefore be impressed with the trust to the extent of the funds so wrongfully obtained and commingled with them."

The Springfield Court of Appeals followed the Huntsville Trust Company case in the case of Consolidated School District v. Citizens Savings Bank, 21 S. W. (2d), l. c. 788, and the Huntsville case is cited with approval in the case of White, County Treasurer, v. Greenlee, 49 S. W. (2d) 132.

Also, in the case of Boone County v. Cantley, Commissioner, 51 S. W. (2d) 56, l. c. 58, the Supreme Court further said:

> "A bank which has given a bond that does not comply with the provisions of Section 12187 R. S. 1929, regardless of the action taken by the county court with respect to it, is not a county depository either in law or in fact. And upon the receipt of county funds by such a bank, under color of being a county depositary, a trust as to funds so deposited arises in favor of the county. Huntsville Trust Co., v. Noel, 321 Mo. 749, l. c. 757; 12 S. W. (2d) 751."

In the case of State ex rel. Cravens, to Use of Consolidated School District No. 2, v. Thompson, 22 S. W. (2d) l. c. 198, the court made the following statement which is appropriate to the question here involved:

> "It is plaintiff's position, as reflected in the first assignment of error, that the recital in the said minute, 'Bond of D. W. Thompson as treasurer approved. Money to be kept in Farmers Trust Co.,' was not sufficient in law to designate a depository for the moneys of the district and to authorize Thompson to place the money there, because not in conformity with the provisions of sections 9582-9586, Rev. St. 1919, governing procedure in respect to county funds; and that, when the power of an inferior body to do a thing depends upon a condition precedent prescribed by statute, all the world must take notice of that limitation of its power and authority, and determine at their own peril whether or not the condition has been complied with and the authority granted; and that the act of the board of education in directing by minute

> entry only that the funds of said district be kept in the Farmers' Trust Company of Grant City, without first advertising for bids, and without requiring a bond of the depository selected, was void and of no effect, and not binding on the district; and that it was the duty of the treasurer before depositing the funds with the Farmers' Trust Company to see and know that said depository had been properly and legally selected and designated, and that a bond of said trust company had been properly approved and filed, and his failure to do so renders him and his sureties liable."

We think the foregoing cases fairly reflect the law of this State with reference to the liability of a person who is the legal custodian of public funds.

According to the law of this State as declared in the cases of City of Fayette v. Silvey; Everton Special Road District v. Bank of Everton; Boone County v. Cantley; and State ex rel. Cravens v. Thompson, quoted from supra, it would be no protection to the treasurer of a board of education that the board authorized or directed the money deposited in some particular banking institution if such banking institution was not legally selected and did not qualify as a depository. The board would not be authorized to accept a bank as the custodian of funds which was not properly selected and which did not qualify as a depository.

We are of the opinion that the Board of Education of Raymore Consolidated School District is required to select a depository for the school funds coming into your hands as above pointed out and that in the event of the failure to do so you would be liable on your official bond for the payment to your successor of

all of the funds coming into your hands as Treasurer of such district which had not been otherwise legally paid out.

Yours very truly,

GILBERT LAMB
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

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