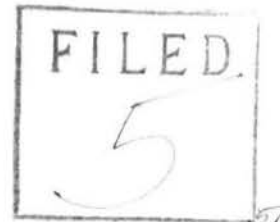


COUNTY COLLECTORS: When Sec. 9885, Laws of Mo. 1933 become effective as to bond.

October 13, 1933.

10-14



Hon. R. Wilson Barrow,  
Prosecuting Attorney,  
Macon, Missouri.

Dear Mr. Barrow:

This department acknowledges receipt of your letter addressed to General McKittrick under date of September 13, 1933 relating to your County Collector's Bond. Your letter reads as follows:

"The last Missouri Legislature passed Senate Bill 254 relating to the bonds of County Collectors in the various counties, etc. This bill was approved May 12, 1933 and provides for the lowering of County Collectors' bonds in counties under 75,000 population where the County Courts order Collectors to make daily deposits of collections in specially selected depositories. In such cases the Collector's bond may be fixed in a sum equal to the largest week's collection of prior term plus ten per cent.

I have advised Mr. J.T. Holman, Macon County Collector that the above law, Laws of Missouri for 1933, page 464, or Section 9885 R.S. Mo. 1929 as amended, took effect ninety days after the adjournment of the Legislature and that same applies to the local Collector's bond now and any premium payments which may be due on said bond inasmuch as the Macon County Court has complied with provisions of the new law. It has been my understanding that said law was passed to relieve County Collectors from taking out surety bonds in excessive amounts and that same would apply in any year remaining in the present Collector's term of office.

As there seems to be some doubt as to when the new law will take effect and apply to Collectors' bonds, I am requesting an opinion from your office upon the question."

The Constitution of Missouri, Sec. 36, Art. IV, p. 87, relating to the time when laws shall become effective, provides as follows:

"No law passed by the General Assembly, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal."

The section under consideration is Sec. 9885, Laws of Mo. 1933, p. 464, which is as follows:

"Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent, of said amount: Provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. The official bond required by this section shall be signed by at least five solvent sureties. Provided, that in all counties which now have or which may hereafter have a population of less than 75,000 inhabitants, according to the last preceding federal decennial census, the county court in such counties may require the county collector thereof to deposit daily all collections of money in such depository or depositories as may have been selected by such county court pursuant to the provisions of Sec. 12184, Revised Statutes of Missouri for 1929, to the credit of a fund to be known as 'County Collector's Fund'; provided further, that when

such deposits are so required to be made, such county courts may also require that the bond of the county collector in such counties shall be in a sum equal to the largest collections made during any calendar week of the year immediately preceding his election or appointment, plus ten per cent of said amount; provided further, that no such county collector shall be required to make daily deposits for such days when his collections do not total at least the sum of One Hundred Dollars (\$100.00); and provided further the collector shall not check on such 'County Collectors' Fund' except for the purpose of making the monthly distribution of taxes and licenses collected for distribution as provided by law or for balancing accounts among different depositories.'"

A careful reading of the above section does not disclose that the terms of the section are not to be effective until some future date; neither does it exempt the persons who are holding office at the present time. It is therefore the opinion of this department that said section is now in force and became effective ninety days after the final adjournment of the Legislature.

By referring to Sec. 9892 R.S. Mo. 1929, which is as follows:

"The county court shall, at the end of the first year, carefully examine the bond given as collector, and may again examine the same at any time before the tax book of the second year of his term shall be delivered to him, and by such examination ascertain if the bond be sufficient, and the sureties thereto still solvent and sufficient, and upon such examination, if found to be necessary, the court shall require an additional bond, as collector, with good security, to be approved by the court, as in the taking of the original bond",

we find that the County Court has the authority at various times to examine the bond of the Collector, and we infer from this section that the sufficiency of the bond is wholly in the hands of the County Court. Therefore, whether it be before the Collector enters upon his duties or while he is carrying out his duties, the County Court has the authority to change or demand a different bond from the Collector.

The copy of the orders which accompanied your letter appear to be in regular form with the exception of Record Y, page 283, Order No. 2, which is as follows:

"Now at this day, the same being the 19th day of July, 1933, the Macon County Court takes up the matter of selecting the depositories for the County Collector's Fund and after due consideration the Court designates The State Bank of LaPlata, Missouri, Atlanta State Bank of Atlanta, Missouri, and the First National Bank of St. Louis, Missouri, effective on and after August 1st, 1933. This order is made pursuant to an Act of the Legislature of the State of Missouri in 1933."

It is the opinion of this department that this order is not sufficient and does not disclose the fact that the terms and conditions of Sec. 12184 R.S. Mo. 1929, relating to the county depository, have been carried out, said section being as follows:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositories of the funds of said county. For the purpose of letting such funds such county court shall, by order of record, divide said funds into not less than two nor more than ten equal parts, and the bids herein provided for may be for one or more of such parts. Notice that such bids will be received shall be published by the clerk of said court twenty days before the commencement of said term in some newspaper published in said county, and if no newspaper be published therein, then such notice shall be published at the door of the courthouse of said county: Provided, that in counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are herein conferred upon county courts with reference to county funds at the same time and manner, except that township funds shall not be divided, but let as an entirety: Provided also, that in all cases of the letting of township funds, three notices, posted in three public places by the township clerk, will be a sufficient notice of such letting."

Oct. 13, 1933.

The new section contemplates that the Collector's Fund, if he complies with the conditions mentioned therein, is to be kept in the same manner as the funds in the hands of the County Treasurer, and that the county depository shall be used by him. Your order does not disclose whether or not proper notice has heretofore been had and that the banks mentioned therein are now and have been the original banks selected as depositories of county funds.

In the case of State ex rel. Cravens v. Thompson, 22 S.W. (2d) 196, l.c. 198, the Court, passing upon this question, said:

"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 trust the above sufficiently answers your question.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

OWN:AH  
ROY MCKITTRICK,  
Attorney General