

I. COUNTY COLLECTOR - Selection of depository for funds.

II. SALARIES AND FEES - Source and method of compensation of deputy circuit clerk.

5-28
May 10, 1935.

Hon. G. R. Breidenstein,
Prosecuting Attorney of Clark County,
Kahoka, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of March 8th, 1935, such request being in the following terms:

"I would like to have an opinion from your department upon the following questions.

Section 9885 of the Laws of 1933, page 464, provides that 'the County Court 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 Section 12134, R. S. Mo. 1929, to the credit of a fund to be known as "County Collectors Fund" '. If the county court requires the Collector to make such deposits, and the bank where such deposits are made should fail, would the collector and his bondsmen be liable for the loss or would the loss fall on the county? Is it compulsory that the court should select such depository and require the collector to make his deposits there, or may the court if it prefers let the collector select his own depository?

The population of this county is between 10,000 and 12,500. The circuit clerk is ex-officio Recorder of Deeds. The fees from this office are sufficient to pay the circuit clerk the salary to which he is entitled by law, but are not sufficient to pay the salary of his deputy in addition. Should not the circuit clerk turn in to the treasurer all fees collected over and above his own salary, and the deputy be paid from the general revenue of the county?"

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I

DEPOSIT OF MONEYS BY COUNTY COLLECTOR.

In the absence of a statute directing or authorizing the selection by the County Court of a depository for funds belonging to the County, the County Collector deposits County funds at his peril. This principle is enunciated in the case of Glaze et al. ex rel. Board of Supervisors v. Shumard et al., 54 S.W.(2d) 726, 728 (1932) as follows:

"Since 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, it follows that even though the county court of Harrison county did select or appoint the Bethany Savings Bank as the county depository and the officer deposited said funds there, nevertheless, if the county court had no authority, power, or jurisdiction to select a depository for the funds of the drainage district, the depositing of such funds by the county treasurer and ex officio collector, to his account as county treasurer in the Bethany Savings Bank, was at his peril. University City, v. Schall, 275 Mo. 667, 205 S.W. 631; Bragg City Special Road District v. Johnson, 323 Mo. 990, 20 S.W. (2d) 22, 66 A.L.R. 1053; Butler County v. Boatmen's Bank, 143 Mo. 13, 44 S. W. 1047."

R. S. Missouri, 1929, Sections 12184 et seq. provide a scheme for the selection of depositories of county funds. Section 12186 provides in part as follows:

"It shall be the duty of the county court, * * to select as the depositories of all the public funds * * the banking corporations, associations or individual bankers whose bids respectively made for one or more of said parts of said funds shall in the aggregate constitute the largest offer for the payment of interest per annum for said funds; Provided, that the court shall have the right to reject any and all bids."

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The proviso from such section as to the rejection of bids has been construed as requiring good faith and due regard for the best interests of the County in rejecting bids. *Denny v. Jefferson County*, 272 Mo. 436, 199 S.W. 250 (1917). Section 9885 as repealed and re-enacted by Laws of 1933, page 464, provides, as to counties of less than 75,000 inhabitants, that "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 Section 12184, Revised Statutes of Missouri for 1929, to the credit of a fund to be known as 'County Collector's Fund;'" Therefore, pursuant to the will of the Legislature, the County Collector in such a County may be required to deposit funds coming into his hands by virtue of his office in depositories selected and designated by the County Court, and if the Collector deposits such funds pursuant to this mandate, neither he nor the sureties on his official bond would be liable for a loss resulting from the insolvency of a depository so required. These statutes could hardly be reasonably construed so as to contemplate liability of the Collector or his sureties for a loss caused by the insolvency of a depository, for such a construction would hold the Collector liable for doing something which the General Assembly has given the County Court the right to force him to do, regardless of his own best judgment.

The use of the word "may" in Section 9885, above quoted, seems to leave the County Court a choice as to whether it will require the Collector to deposit daily his collections in depositories selected by the County Court under the provisions of Section 12184.

II

METHOD OF PAYING COMPENSATION TO DEPUTY CIRCUIT CLERK

As to the second question of your request, this office is of the opinion that it is answered by an opinion of this Department dated May 7, 1934, to Hon. Birt P. Bryant, Clerk of the Circuit Court of Dunklin County, Kennett, Missouri, copy of such opinion being enclosed.

Very truly yours,

EDWARD H. MILLER
Assistant Attorney General

APPROVED:

ROY McWITTRICK
Attorney General