

SECRETARY OF STATE - Depositories of motor vehicles re-
quired to give bond; not entitled to deduct amount
of F. D. I. in fixing amount of bond.
February 13, 1935

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Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion upon
the following state of facts:

"Since the enactment of a Federal statute providing for the incorporation of Federal Deposit Insurance Corporation and further providing for membership therein by state banks and national banks and other member banks, the question has arisen as to whether a member bank carrying that Federal Insurance could be taken by the Motor Vehicle Department of the Secretary of State's office as having complied with the provisions of Section 7784.

"This Section provides for the deposit of fees for the registration of motor vehicles, etc. to be deposited by the Secretary of State in a bank at the location of a branch office and such depositories shall be required by the Secretary of State to give a good and sufficient bond or other legal security in an amount equal or exceeding any sum deposited. In other words, the bank's contention is that since it carries the F. D. I. as a protection to depositors that it should not be required to execute the bond or furnish security to the Secretary of State to an amount up to the Five Thousand Dollars.

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"There is apparently no way by which the Secretary of State may know that the depository selected, which at the time of its selection was a member bank in F. D. I. Incorporation, has continued to carry that protection for the benefit of its depositors. There are other pitfalls which would intervene between the bank and its depositors and the Secretary of State not having a bond as this statute requires or other security, leave the State without protection to these funds.

"We would be glad to have your opinion on the subject and especially whether the F. D. I. could be taken for an amount up to Five Thousand Dollars without bond or other security and if it could, what it should furnish to the department as evidence of that fact and how it would keep the department informed as to its continuing existence. 'Other legal security' is rather broad in its meaning. It could, of course, include a deposit of bonds or securities put up as collateral. As I understand, the banks merely desire to write a letter or make an oral statement that they do carry the Federal Insurance."

Section 7784, Revised Statutes of Missouri, 1929, provides in part as follows:

"All fees for the registration of motor vehicles, trailers, chauffeurs, operators, certificates of title and motorcycles provided for herein shall be collected by the secretary of state and deposited in a bank where the branch office collecting same is located. Such depositories shall be required by the secretary of state to give a good and sufficient bond or other legal security in an amount equaling or exceeding any sum that may be deposited therein. *"

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Prior to the amendment of the above statute in 1927, Laws No. 1927, p. 308, the secretary of state was without authority to deposit such funds in local banks where the collector was located, and the depositing of such funds by the Secretary of State was illegal and created in the bank receiving such deposit a trust fund in favor of the State of Missouri. State ex rel. Gentry v. Page, Bank of St. Louis County et al, 14 S. W. (2d) 597.

The 1927 amendment provided that the money should be deposited in a bank where the branch office collecting same is located. This is the only authority for the secretary of state to make such a deposit, and in making that deposit he must comply with all the terms of Section 7784, which requires a bond. No exception is made as to the amount of additional security carried by the bank, such as F. D. I., and therefore a bank becoming a depository of such state funds must give the bond required by the statute in an amount equal to or exceeding any sum that may be deposited therein.

It is, therefore, the opinion of this office that the secretary of state must receive a bond in compliance with Section 7784, and that the amount of F. D. I. protection for the bank is not a factor in the acceptance of this bond.

Respectfully submitted,

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APPROVED:

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