

- I. County Collectors: Laws of Missouri 1937, page 502, impinge upon Section 12184 R. S. Mo. 1929 and repeals the same by implication as to the irreconcilable features.
- II. 1937 Laws, supra, do not impinge upon Section 9885, Laws of Mo. 1935, page 408.

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March 22, 1939.

Honorable Jack H. Denny  
Prosecuting Attorney  
Howard County  
Fayette, Missouri

V-5



Dear Mr. Denny:

We desire to acknowledge your request for an opinion on March 3, 1939, which is as follows:

"Section 1, page 502 R. S. Mo. 1937 provides that notwithstanding any provisions of law of this state, the public funds of every County, Township, City, town, village, school district, etc. shall secure their funds by deposit of securities. This section does not specifically name County Collector funds.

"Does this statute repeal by implication the authority granted to governing bodies, such as the County Court exercises in designating depository for County Treasurer's funds and for County Collector's funds--specifically Sections 12184 R. S. 1929, and 9885, as amended?

"My idea is that Section 1, page 502, Session Acts, 1937 simply relates to the class of securities required to secure public deposits, and does not take away the authority of the County Court to designate a depository for the Collector.

"It has been suggested to me that since this statute does not specifically mention County Collector's funds, that the Collector is an insurer of his deposits, although the County Court has designated his depository.

"It is my opinion that when the Collector's depository is named by the County Court and his funds are placed in the County Collector's fund as provided in Section 9885, Session Acts, 1935, page 408, his funds become part of the public funds of the County, and are therefore protected by the securities in any event.

"May I have your opinion on these questions?"

A depository of county funds was formerly selected under the provisions of Section 12184 R. S. Mo. 1929, which is 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. (R. S. 1919, Section 9582.)"

The General Assembly of 1937 materially changed the depository laws of the State of Missouri with reference to the payment of interest and the securities to be given by the banking institutions selected as depositories, to safeguard and protect the public funds of the state, its various institutions and the political sub-divisions thereof.

Laws of Missouri of 1937, page 502, Section 1 thereof, provides, in part, as follows:

"Notwithstanding any provisions of law of this state or of any political subdivision thereof, the public funds of every county, township, city, town, village, school district of every character, road district, drainage or levee district, state hospital, Missouri State School, Missouri School for the Deaf, Missouri School for the Blind, Missouri Training School for Boys, Industrial Home for Girls, Con-

federate Soldiers' Home, Federal Soldiers' Home, Missouri State Sanatorium, earnings of Missouri Penitentiary, State University, Missouri State Teachers' Colleges, Lincoln University, which shall now or hereafter be deposited in any banking institution acting as a legal depository of such funds under the provisions of the Statutes of Missouri requiring the letting and deposit of the same and the furnishing of security therefor, shall be secured by the said legal depository making deposit, as hereinafter provided, of securities of the same character as are required by Section 11469 and all amendments thereto for the security of funds deposited by the State Treasurer under the provisions of Article 1 and 2 of Chapter 72 of the Revised Statutes of Missouri 1929, and all amendments thereto. The said securities shall, at the option of the depository banking institution, be delivered either to the fiscal officer or the governing body of the municipal corporation or other depository of said funds, or by depositing such securities with such disinterested banking institution or safe depository as trustee as may be satisfactory to both parties to the depository agreement. The rights and duties of the several parties to the depository contract shall be the same as those of the state and the depository banking institution respectively under Section 11469 of Article 2 of Chapter 72 of the Revised Statutes of Missouri 1929 and all amendments thereto, \* \* \* ". (Underscoring ours)

Section 3, 1937 Laws, supra, is, in part, as follows:

" \* \* \* the award \* \* \* of such funds shall be made in each case, without bids and without requiring the payment

of any bonus or interest, by the authority or authorities which are by statute empowered to make awards of such funds upon bids." (Underscoring ours)

Section 4, 1937 Laws, supra, is, in part, as follows:

" \* \* \* \* in the event that the selected depository or depositories within such territory shall fail to accept such award or awards of such public funds as may be made, then the authority or authorities which are by law empowered to make such selection of depositories and awards of public funds thereto, are authorized and empowered, etc." (Underscoring ours)

The subject matter of the above statutes is in conflict and said statutes should be construed under the rule stated in State ex rel. Mo. Pacific Ry. vs. Public Service Comm. 204 S. W. 395, 275 Mo. 60, 65, which is as follows:

" \* \* \* The law is that, if two statutes deal with the same subject-matter and are inconsistent with each other, so that both cannot be operative as to such subject-matter, the latter act will be regarded as a substitute for the former one and will operate as a repeal, although it contains no express repealing clause. A requirement that a carrier shall furnish track scales is a regulation in regard to weighing cars and the freight thereon. \* \* \* "

In the case of Gasconade County vs. Gordon, 145 S. W. 1160, 241 Mo. 569, 583, the court stated the following rule of Construction as to two acts of the legislature:

"If they are absolutely inconsistent and repugnant, then of course the latter prevails and the former falls."

But a new statute is amendatory, and repeals an old one by implication only to the extent of the irreconcilable repugnancy between the two. State ex rel. Holliday vs. Rinke, 121 S. W. 159.

The county court, in Section 12184, supra, is the proper body to designate a depository of the funds of such county but, in so doing, must follow the procedure provided in the Laws of Missouri 1937, page 502.

#### CONCLUSION

Therefore, it is the opinion of this department that said Law of Missouri 1937, page 502, is inconsistent with and repugnant to Section 12184, supra, and the Law of 1937, supra, being last, it prevails, but only to the extent of such irreconcilable repugnancy and the county court not having been eliminated as the proper body to select such depository, it is the proper body to make such selection but under the provisions of the 1937 Law, supra.

#### II.

Section 9885, Laws of 1935, page 408, relating to bond of county collectors and providing for daily deposits in counties having a population of less than 75,000 by order of county court, and bonding of county depositories, 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 in accordance with the provisions of Sections 12184, 12185, 12186 and 12187 of the Revised Statutes of the State of Missouri 1929, to the credit of a fund to be known as 'County Collector's Fund,' and such depository or depositories shall be bound to account for the moneys in such 'County

collector's Fund' in the same manner as the public funds of every kind and description going into the hands of the county treasurer and under the same depository bond as required to be given under section 12187 Revised Statutes of Missouri 1929; 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 Collector's 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. (Underscoring ours)

The condition of the collector's bond in the above section is exactly the same as in the same section of the Laws of 1933 and Revised Statutes of 1929. The repeal of the 1929 Statute, *supra*, and the 1933 Law, *supra*, was obviously not made to vary the liability on the collector's bond.

It is true that Section 9885, *supra*, refers to Sections 12184, 12185, 12186 and 12187 Revised Statutes of Missouri 1929, but such reference is merely as to the selection by the County Court of a depository under the



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provisions of 1929 Revised Statutes and such sections were repealed by implication by the Depository Act of 1937, supra.

Section 9885, supra, containing the provision of the condition of a bond of a collector "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" is not in conflict with any part of the Session Act of 1937, page 502, supra. There is no inconsistency or repugnance apparent. Therefore, the legislature in the 1937 law made no attempt to vary the condition of the collector's bond.

#### CONCLUSION

Therefore, it is the opinion of this department that the Depository Law of Missouri, 1937 Session Acts at page 502, does not impinge upon Section 9885, Laws of Missouri 1935 at page 408, nor affect the condition of the collector's bond stated therein.

The question as to whether the County Collector is relieved of liability where he has deposited his funds in a depository selected by the county court, under and by virtue of Section 9885, Laws of Missouri 1933, page 464, is passed on in an opinion from this department to Mr. P. C. Breit, Prosecuting Attorney of Andrew County on February 13, 1935.

Respectfully submitted,

S. V. MEDLING  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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