

COUNTY TREASURER: If County Treasurer elects to give surety
bonds and County Court accepts same, the
BONDS: premiums are to be paid by the County Court.

July 29, 1938

Hon. Elvin S. Douglas
Prosecuting Attorney
Folk County
Bolivar, Missouri



Dear Mr. Douglas:

We have received your letter of July 20 which reads
as follows:

"I direct your attention to Section 1
relating to Bonds, of the Sessions acts
of 1937, page 190.

"Our County Treasurer gave a surety bond
when he took office. It was accepted by
the County Court, with the express under-
standing that he paid for same himself, and
that the County would not be expected to
pay the premiums on same.

"Of course, besides the County, the Schools
and Special Road districts are protected
by the surety bonds, as well as the Capitol
School fund.

"If no such agreement had been made by the
County Court and Treasurer, in your opinion
would the County have been liable for the
total amount of the premiums on said surety
bonds, or would the various bodies and funds

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protected have been liable for their pro rata share of such costs.

"Assuming that the above agreement is binding on the treasurer, in your opinion did this relieve other bodies and funds protected by said bonds from their liability to pay their pro rata share of such premiums, if they are liable in any case, absent agreement to the contrary, by the bodies themselves."

You state that the County Treasurer gave a surety bond when he took office and that the same was accepted by the County Court. This procedure fully satisfies the requirements outlined in the Laws of Missouri, 1937, at page 190 in connection with the posting of a surety bond. This particular law with respect to county officers provides in effect that whenever any officer of any county of this State shall be required by law to enter into any official bond "he may elect, with the consent and approval of the governing body of such * * county" to enter into a surety bond or bonds with a surety company or surety companies authorized to do business in Missouri. Consequently, since the County Treasurer has elected to file a surety bond and since the County Court has accepted and approved same, the requirements of this statute have been fully met and the surety company bond is proper.

This law passed by the 1937 Legislature further provides that the cost of every such surety bond shall be paid by the public body protected thereby. In this connection we are enclosing herewith a copy of an opinion dated October 5, 1937, rendered by this office to the Honorable Alvin H. Juergensmeyer, Prosecuting Attorney of Warren County, which holds that if the County Treasurer elects to file a surety bond and the governing body, that is the County Court, approves, then in that event the County Court would be required to pay the premium on such surety bond; that if these two requirements are met, it is incumbent upon the County Court as the governing body to pay the premium on the same.

Assuming that the County Court had agreed to accept a particular surety bond or bonds and that there was no additional

agreement whereby the County Treasurer agreed to pay the premiums on the same, you ask whether the county would be liable for the total amount of the premiums on the surety bonds or "would the various bodies and funds protected have been liable for their pro rata share of such costs."

This particular question was answered by this department in an opinion dated February 28, 1938 and addressed to the Honorable Virgil L. Ratbun, Prosecuting Attorney of Nodaway County, Missouri. In this opinion we said:

"It is also the opinion of this office that the county court is liable for the premium on a surety bond lawfully consented to and approved by the county court in the full amount of the premium for the reason that the public body protected is the governing body of the county, in other words, the county court. The county treasurer is not compelled to give separate bonds to the state township or various school districts, but only under the general law and under the special law providing for surety bonds, to the county court."

It is therefore our opinion that the County Court must pay the premiums on all surety bonds accepted and approved according to law in connection with the office of County Treasurer under the terms of the Laws of Missouri, 1937, at page 190.

For the purposes of this opinion you also asked us to assume that the agreement between the County Treasurer and the County Court was binding and with this assumption you desired to know whether such agreement would "relieve other bodies and funds protected by said bonds from their liability to pay their pro rata share of such premiums." We think what we have said above likewise answers this question. If the Treasurer submits a surety company bond for any statutory purpose and it is accepted and approved, the County Court is liable for the premium.

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The County Court is expressly made liable as the governing body, and there is no liability placed on the separate bodies or funds. The statute does not say that any fund shall be liable, but rather the governing body. It is a well recognized general rule of law that no payments can be made out of a public fund, nor is a public body liable for the payment of any obligation nor can it pay out any amounts whatsoever, without direct statutory authorization for such payment. We are not aware of any law which specifically permits the payment of such expenditures out of the several funds you mention, particularly in connection with the office of the County Treasurer.

CONCLUSION

It is, therefore, our conclusion that if the County Treasurer offers corporate surety bonds, and the same are accepted by the County Court, the County Court is liable for the payment of the premiums thereon; that the said premium or a portion thereof cannot be paid out of certain funds, such as the School Fund, held by the County Treasurer even if the County Court can legally contract away its statutory duty to pay for any of such bonds which it approves.

Respectfully submitted

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

JFA/w