

DEPOSITORIES: ) Banks may pledge their assets to secure public  
BANKS & BANKING: ) funds where authorized by statute.  
Depositories of county, cities of 3d Class,  
township, school districts & levee and drainage  
district discussed.

January 30, 1937.

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Honorable Elbert L. Ford  
Prosecuting Attorney  
Dunklin County  
Kennett, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you enclose a letter received from Mr. J. C. Welman, Cashier, Bank of Kennett, Kennett, Missouri, in which he requests you to secure the opinion of this Department on the questions submitted in his letter. We set forth in full his letter:

"As you are aware, we have been executing personal bonds signed by some of our directors for the past several years for the purpose of securing funds of the County, Township, City, various School Districts and various Levee and Drainage Districts.

"We are desirous of discontinuing this practice and pledging securities belonging to the bank in lieu thereof. The question has been raised as to the legal authority of the County, Township, City, School District and Levee and Drainage Districts to handle in this manner. We are quite sure, however, that the statutes provide for the pledge of such securities to secure County funds but are uncertain on the other funds. We do not know, however, whether it is necessary to pledge securities in any margin above the amount of the deposit we are attempting to secure. We further understand that by reason of a recent statute the amount of F. D. I. C. insurance, namely \$5000.00, can be deducted from the amount of funds which must be secured.

"We would like to know whether a definite opinion could be obtained by you from the Attorney General as to the legality of the various municipalities above mentioned accepting the security in the manner described above, whether any margin above the amount to be secured would be required, and what type of securities would be eligible for us to pledge. We have in mind using obligations of U. S. Government, direct and/or fully guaranteed, State of Missouri direct obligations, direct obligations of Dunklin County, Missouri, and possibly direct obligations of the City of St. Louis, Missouri.

"Inasmuch as it is necessary to make a decision in this connection in the very near future, we will appreciate very much any assistance you may be able to give us in obtaining an authoritative ruling which could be relied upon by the municipalities affected."

As we interpret the letter, you desire to have our opinion as to the legal authority of the county, township, city, school district, and levee and drainage district, respectively, to accept pledges of banks' assets and securities to secure them against loss of the public funds deposited in the respective banks.

Various statutes have been enacted in Missouri authorizing the pledging of assets to secure public funds deposited in selected depositories.

Section 11469, R. S. Mo. 1929, as amended by Laws of Missouri, 1931, page 378, authorizes the pledging of certain bonds and other securities of banks to secure state funds deposited by the state treasurer. This statute was enacted by the General Assembly in 1879, pertaining to the safeguarding of the public funds to carry out the provisions of Section 15, Article X, of the Constitution of Missouri of 1875.

#### I.

Under the provisions of Section 12187, R. S. Mo. 1929, as amended by Laws of Missouri, 1935, page 316, it is provided that,

"\* \* \* the (county) court may accept in lieu of real estate as security, bonds of such county, or of the State of Missouri, or of the United States, or bonds fully guaranteed by the United States, which such bonds shall be deposited as the court may direct, with a Trustee, Trust Company or other fiduciary designated or approved by it; \* \* \*"

In the case of Huntsville Trust Co. v. Noel, 12 S. W. (2d) 751, 754, the Supreme Court recognized the right of a trust company to pledge its government bonds to secure the county in lieu of real estate as security (personal bond) in the following language:

"It is in lieu of that security that the statute authorizes the taking of bonds of the United States. It would follow, therefore, that the proviso authorizes the court to take government bonds in lieu of the security afforded by a bond signed by sureties who own real estate."

## II.

Under the county depository law, Article 8, Chapter 85, Section 12184, R. S. Mo. 1929, it is provided as follows:

"\* \* \* 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: \* \* \*"

Since township depositories are governed by the same laws in essential respects as county depositories, banks are authorized to pledge the same securities as in county depositories and township boards may accept the same securities as county courts may and in the same manner.

III.

Sections 6793 and 6794, R. S. Mo. 1929, cities of the Third Class (Kennett, we understand, is of that class) provide for the selection of a depository of the funds of the city in said section more particularly described and that the designated bank to execute a bond payable to the city, to be approved by the mayor and filed with the city clerk, with not less than three solvent sureties, who shall own unencumbered real estate in the state of as great value as the amount of said bond--the penalty of said bond to be at least double the revenues of the city for any one year and conditioned for the faithful performance of all the duties and obligations devolving by law or ordinance upon said depository, etc.

These sections providing for the selection of depositories for cities of the third class, do not provide for pledging of assets.

IV.

With reference to the selection of depositories of school moneys, Section 9362, R. S. Mo. 1929, provides in part as follows:

"The board of education of city, town and consolidated school districts in this state shall select depositories for the funds of such school district in the same manner as is provided by law for the selection of county depositories; \* \* \*"

The above section provides the statutory method of selecting the depositories of school funds as stated in School District of Cameron v. Cameron Trust Company et al., 51 S. W. (2d) 1025, 1. c. 1026:

"Article 9 of chapter 85, R. S. 1929 (Mo. St. Ann. c. 85, art. 9, Secs. 12184-12198), which governs the selection of depositories of school funds by virtue of section 9362, R. S. 1929 (Mo. St. Ann. Sec. 9362), requires school boards to select a depository every two years. The provisions of the statute are mandatory and must be complied with in all respects."

The Springfield Court of Appeals in the case of French v. School Dist. No. 20, 7 S. W. (2d) 415, 1. c. 416, said the following:

"Section 9582, R. S. 1919, provides how a county depository shall be selected. Section 11268, R. S. 1919, provides that the board of education of a city, town, or consolidated school shall select depositories in the same manner county depositories are selected. Section 9585, R. S. 1919, provides how county funds are to be secured by the county depository, and included in the security permitted are bonds of the United States or bonds of the state of Missouri. But there is no statute defining what security shall be given by the depository of a city, town, or consolidated school district. Section 13379, R. S. 1919, specifically authorizes a bank which has been selected as a depository for state funds to pledge its real estate notes to secure such funds."

And the same court, in the case of Consolidated School Dist. No. 4 v. Citizens' Savings Bank of Cabool, 21 S. W. (2d) 781, 1. c. 787, said:

"Section 11268, Rev. St. Mo. 1919, provides that depositories for school funds shall be selected in the same manner as provided by law for the selection of county depositories; section 9582, Rev. St. Mo. 1919, provides how county depositories shall be selected; and section 9585, Rev. St. Mo. 1919, provides for the giving of security. There is no section of the statute defining what security shall be given to a school district."

These cases would indicate that banks are not specifically authorized to pledge their assets to secure public funds belonging to school districts the same as depositories are for county funds, going on the theory that Section 9362, supra, provides only for the selection of depositories and not as to the security given.

## V.

Section 10767, R. S. No. 1929, provides that the treasurer of drainage districts organized by circuit courts shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors.

We do not find that a depository is required under this section or that assets of the depository are required to be put up as security for said funds. However, we refer you to the case of Cantley, State Commissioner of Finance, v. Little River Drainage District, 2 S. W. (2d) 607, in which the court discussed this question extensively and held that a bank which deposited with the drainage district its bills receivable as collateral to secure a loan made to the bank by the drainage district, that it could not be recovered from the district and that the bank could not plead ultra vires in view of the fact that they had received the benefit of the loan.

From the above and foregoing it is our opinion that in the statutes where it specifically authorizes the bank to pledge certain designated securities or bonds owned by the bank to secure the state and municipalities and political sub-divisions against loss, such as the state, the county and the township, that the banks are so authorized and have full authority so to do. In other words, the selected depository is authorized to secure the public funds in the manner prescribed by the statute, and in those political sub-divisions where only a personal bond or other kind of bond is required that they are not so authorized to pledge assets. Where the statutes particularly outline a plan for the safeguarding of public funds, political sub-divisions should follow the statutory method, and if they follow some other plan than the statutory method they are proceeding at their own peril.

It is our further opinion that the amount of security required to be given by a bank to secure public funds is reduced \$5000.00 under the provisions of Laws of Missouri, 1935, page 372, if such bank is insured with the Federal Deposit Insurance Corporation.

Hon. Elbert L. Ford

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Jan. 30, 1937.

The questions asked by you are broad, and a different state of facts on a concrete case presented to us might alter our opinion.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General.

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