

COUNTY TREASURER - OFFICERS -

BONDS: County court can refuse to accept a surety bond from a county treasurer.

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November 17, 1942

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FILED

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Hon. Robert H. Frost  
Prosecuting Attorney  
Clinton County  
Plattsburg, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated November 13, 1942, which reads as follows:

"Will you please give me your opinion regarding Section 3238 Revised Statutes 1939 as regards the liability of a County to approve a surety bond for a County Treasurer. As I read the section, the county court has a right to refuse to consent to the filing of a surety bond. The Treasurer of our county has always given a surety bond and it has always been approved. The question now arises that if the court approves the bond, will they not be liable for the cost thereof. And second, can they refuse to approve the bond even though they will have to pay the cost thereof."

Under Section 13795 R. S. Missouri, 1939, the county treasurer must enter into a bond to the county, within ten days after his election, or appointment.

Section 13795, supra, reads as follows:

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"The person elected or appointed county treasurer under the provisions of this article shall, within ten days after his election or appointment as such, enter into bond to the county in a sum not less than twenty thousand dollars, to be fixed by the county court, and with such sureties, resident landholders of the county, as shall be approved by such court, conditioned for the faithful performance of the duties of his office."

This section appears in the reenacted Laws of 1937, page 424. Under this section the sureties are resident landholders of the county.

Section 3238 R. S. Missouri, 1939, partially reads as follows:

"Whenever any officer \* \* \* of any county of this state, \* \* \* shall be required by law of this state, \* \* \* to enter into any official bond, or other bond, he may elect, with the consent and approval of the governing body of such \* \* \* county, \* \* \* enter into a surety bond, \* \* \* with a surety company \* \* \* authorized to do business in the state of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

This section was first enacted in Laws of 1937, page 190, section 1.

Both of the above sections appear in the Laws of Missouri, 1937, Section 13795, supra, being a reenactment and Section 3238, supra, being the first enactment of that law. These sections appear in the Laws of Missouri, 1937, therefore, both sections should be read together.

Where two acts relating to the same subject matter are passed at the same session of the legislature, they are in para materia, and, to arrive at the true legislative intent they must be construed together. (Hull v. Baumann, 131 S. W. (2d) 721.)

Under Section 13795, supra, it is mandatory that the county treasurer give a bond in a certain amount, and with certain sureties, and, under Section 3238, supra, the alternative to Section 13795, supra, is that the county treasurer may elect not to give the bond as set out under Section 13795, supra, and may, with the consent and approval of the county court, enter into a surety bond. When the county court consents to, and approves of, the giving of such a bond by the county treasurer, it is mandatory that they pay the costs of the premiums for the bond. In reading Section 3238, supra, it is very noticeable that it sets out the election of the county treasurer to give a surety bond, and the consent and approval of the governing body which in this case is the county court, and further says:

" \* \* \* and the cost of every such surety bond shall be paid by the public body protected thereby." (Under-scoring ours.)

In other words, the county court shall pay the costs of every such surety bond, where the county treasurer elects to give such a bond, and the county court consents to,

and approves the giving of such a bond. That the county court is liable for the costs was held in the case of Motley et al v. Callaway County, 149 S. W. (2d) 875, 1. c. 877, where the court said:

" \* \* \* The Legislature, no doubt taking notice of the results of some of these during recent depression periods, considered that surety company bonds could give better protection to public funds in the custody of public officers. It, therefore, authorized such a bond for county officers if the officer elected to furnish it and the county court approved it. It also recognized that to require an officer to pay the premiums therefor would have the effect of reducing his actual net compensation. So when consent and approval for the officer to purchase such a bond at public expense was given in advance by 'the public body protected,' \* \* \* \* \* ." (Underscoring ours.)

Under the above holding, it is necessary that the consent and approval for the officer to purchase such a bond must be given by the county court in advance of the giving of such bond. The wording of Section 3238, supra, is very plain and unambiguous. The primary rule of construction is to ascertain the lawmakers' intent from the words used, if possible, and to put on the language of the legislature, honestly and faithfully, its plain and rational meaning, and to promote its object, and the manifest purpose of the statute. (Artophone Corporation v. Coale, 133 S. W. (2d) 343.)

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The main question in your request is whether or not the court is liable for the cost of the surety bond where it approves the bond. The bond could not be given unless the county treasurer elected to give such a bond and the county court consented to the acceptance of it.

Your second question in your request is: Can they refuse to approve the bond even though they will have to pay the cost thereof? As stated before, such a bond cannot be given unless the county treasurer elects to give such a bond, and the county court consents to and approves of, the giving of such a bond.

CONCLUSION

It is, therefore, the opinion of this department that if the county treasurer elects to give a surety bond, as set out in Section 3238, supra, instead of a property bond, as set out in Section 13795, supra, and the county court consents to, and approves of, the giving of such a bond, then the county is liable for the premiums on such a bond.

It is further the opinion of this department that the county court can refuse to consent and approve to the giving of a surety bond by the county treasurer, and, in that event, such a bond cannot be given by the county treasurer, and it follows, that the county would not be liable on any premium on such a bond, for the reason that the county treasurer should give a personal property bond as set out in Section 13795, supra.

Respectfully submitted

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APPROVED:

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ROY MCKITTRICK  
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