

COUNTY DEPOSITARY: Accounts maintained by the county treasurer and ex-officio collector in a different capacity and COUNTY FUNDS: right are insured up to \$10,000 by the FDIC; county court should select new depositary where depositary fails to qualify; selection not necessarily limited to banks within this state.

FILED
31

April 26, 1954

Honorable William Y. Frick
Prosecuting Attorney
Putnam County
Unionville, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office which request reads, in part, as follows:

"I respectfully request an opinion from your office construing Section 362.490, V.A.M.S., 1949, and Section 110.010, V.A.M.S., 1949, as applied to the following fact situation.

"Putnam County operates under township organization. Consequently our treasurer is also ex-officio collector. All moneys coming into his hands are, as of this date, deposited in the Farmers Bank of Unionville, Missouri. He maintains a collectors account, a treasurers account, a library account, and about thirty-five King Road accounts.

"The questions which I hope you can resolve for me are as follows:

"1. Inasmuch as only the three enumerated accounts of the total of thirty-five maintained ever exceed the sum of \$10,000.00, the amount of FDIC liability, can Section 362.490 be construed so as to make it proper for the bank to pledge securities in an amount equal only to those accounts exceeding \$10,000.00, less the \$10,000.00 for each of them, and thereby be in compliance with the above statute, or is the \$10,000.00 of FDIC liability applicable only to all county

Hon. William Y. Frick

deposits in a lump sum, regardless of the number and size of the accounts into which it might be divided?

"2. Should the above mentioned bank refuse to comply with Section 110.010, does the County Court have any choice but to select another depository for county funds? (In this connection, it should be noted that according to the Missouri cases decided upon this subject, failure to comply with the various statutes with regard to depositories of county funds places the counties claim against a defunct bank in the preferred class)

"3. In the event the county court should select a new depository, are they limited in their choice to banks located within this State."

Section 110.010, RSMo. 1949, provides as follows:

"1. 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, Confederate 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 deposits, as provided in section 110.020, of securities of the same character as are required by section 30.270, RSMo. 1949, and all amendments thereto for the security of funds deposited by the state treasurer under the provisions of section 30.240, RSMo. 1949, and all amendments thereto.

Hon. William Y. Frick

"2. 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 depositor 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.

"3. 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 30.270, RSMo 1949, and all amendments thereto; provided, however, that in the event a depository banking institution should deposit the bonds or securities with a trustee as above provided, and the municipal corporation or other depositor of funds shall give notice in writing to the trustee that there has been a breach of the depository contract and shall make demand in writing on the trustee for the securities, or any part thereof, then the trustees shall forthwith surrender to the municipal corporation or other depositor of funds a sufficient amount of such securities as may fully protect the depositor from loss and the trustee shall thereby be discharged of all further responsibility in respect to the securities so surrendered."

Section 362.490, provides as follows:

"Notwithstanding any provision of law of this state or of any political subdivision thereof requiring security for deposits in the form of collateral, surety bond or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of an act of congress creating and establishing the Federal Deposit Insurance Corporation or similar agency created and established by the congress of the United States."

You first inquire whether the Federal Deposit Insurance Corporation liability applies to separate accounts or all county deposits in a

Hon. William Y. Frick

lump sum. In this regard we direct your attention to Title 12, Chapter 16, Section 1813, U.S.C.A., which provides in part as follows:

"(m) The terms 'insured deposit' means the net amount due to any depositor for deposits in an insured bank (after deducting offsets) less any part thereof which is in excess of \$10,000. Such net amount shall be determined according to such regulations as the Board of Directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the bank maintained in the same capacity and the same right for his benefit either in his own name or in the names of others except trust funds which shall be insured as provided in subsection(1) of section 1817 of this title. Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States or Puerto Rico, of the Virgin Islands, of any county, of any municipality, or of any political subdivision thereof, herein called 'public unit', having official custody of public funds and lawfully depositing the same in an insured bank shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in the same insured bank in custodial capacity."

In construing this provision in the case of Billings County vs. Federal Deposit Ins. Corp., 71 Fed. Supp. 696, the court said, at l.c. 700:

"One of the purposes of this section was to make a separate insured deposit of an account maintained by a depositor in a different capacity and a different right from that in which such depositor maintained some other account. Were that not true, the statute would have provided that the amount due any depositor should be determined by adding together all deposits maintained in the bank by such depositor. Here the statute specifically says that the amount due shall be determined by adding together 'all deposits in the bank maintained in the same capacity and the same right.'"

We refer also to Section 303.3 of the 1946 Supplement to Title 12 Code in Federal Regulations adopted under authority of Section 1813, Chapter 16, Title 12, USCA., which provides as follows:

"The owner of any portion of a deposit appearing on the records of a closed bank under the name of a public official, State, county city, or other political subdivision will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank; Provided, that the interest of such owner in the deposit is disclosed on the records maintained by such public official State, county, city or other political subdivision and, provided further, that such records have been maintained in good faith and in regular course of business."

Concerning this regulation the court in the Billings County case noted supra, said, l.c. 702:

"As counsel for the defendant point out, the regulation has reference to a situation where there would be a number of municipalities or entities which have a common treasurer who must have deposited in a commingled single account in an insured bank all of the funds from this number of independent, separate municipalities * * *."

See also the case of Federal Deposit Ins. Corp. v. Casady, 106 Fed. 2d. 784.

In view of the above noted provision, and the court interpretation given thereto, it is our opinion that the \$10,000 F.D.I.C. liability applies separately to accounts maintained by a depositor in a different capacity or right. Consequently, under the provisions of Section 362.390, RSMo. 1949, the depository need only pledge securities in an amount equal to the amount that a separate insured account, or accounts, exceed \$10,000 and of course no security would be required on a separate insured account which does not exceed \$10,000.

Section 110.040, provides as follows:

"In the event that there shall be no banking corporation, association, trust company or individual banker in the territory within which the depository or depositories of any public fund must, under the applicable laws of this state, be located to become eligible for selection, or in the event that the selected depository or depositories within such territory shall fail or 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

Hon. William Y. Frick

awards of public funds thereto, are authorized and empowered to select as depositary or depositaries such banking institutions located outside the territorial limits aforesaid as such authority or authorities may deem the safest and most convenient depositary or depositaries for such public fund."

In view of the above provision we are of the opinion that if a depositary selected refuses to pledge the required security the county court should select another depositary which will comply with this requirement.

You next inquire whether in selecting a depositary the county court is limited in its choice to banking institutions located within the territorial limits of this state. We have examined the provisions relating to county depositaries and while we find no affirmative legislative enactment authorizing such selection we are of the opinion that, provided all provisions relating to the selection and qualification of a depositary are otherwise complied with, there would be no prohibition against designating an outstate bank.

CONCLUSION

Therefore, it is the opinion of this office that the \$10,000 Federal Deposit Insurance Corporation liability applies to each separate account maintained by the county treasurer and ex-officio collector in a different capacity and in a different right from that in which such depositary maintains some other account and under the provisions of Section 362.490, a depositary need only pledge security for those amounts which are not subject to F.D.I.C. coverage.

It is the further opinion of this office that if a depositary selected fails to pledge the required security, the county court should select another depositary for the county funds and that in making such selection, the county court is not limited to a depositary located within the territorial limits of this state if all other provisions relating to the selection and qualifications are otherwise complied with.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Donal D. Guffey.

Yours very truly,

JOHN M. DALTON
Attorney General