

BONDS:

Premium of surety bonds of circuit clerk if consented to by the governing body in accordance with Section 1, page 190, Session Laws of 1937, must be paid by the county court direct and not allowed under the County Budget Act of 1933.

February 16, 1938

Mr. W. O. Justice,
Clerk of Circuit Court,
Newton County,
Neosho, Missouri.



Dear Sir:

This will acknowledge the receipt of your request dated January 29, 1938 for an official opinion from this office, which request is as follows:

"I will appreciate very much if I could have an opinion of the following: Is the County Court liable for payment of a Circuit Clerk's surety bond?

A Circuit Clerk's bond is not approved by the County Court and they have nothing whatsoever to do in regard to it. The Circuit Clerk's bond in this county is set and approved by the Circuit Judge, is recorded in the Recorder's Office and filed in the State Auditor's Office.

I have just read the opinion on the subject in reference to the County Court paying or disallowing the payment for the bonds approved by the County Court.

This question arises is the County Court the governing body or the Circuit Court in this case? If the Circuit Court be the governing body would it not be proper to include the cost for the bond in the yearly budget under class two?"

Section 1, page 190, Session Laws of 1937, applying to county officers is as follows:

"Whenever any officer **** of any county of this state*****shall be required by law of this state*****or by any order of any court in 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 *****to enter into a surety bond, or bonds, with a surety company or surety companies, 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 is a new statute regarding surety bonds and is the first time that such an act has been created by the legislature. In your request you inquire if the circuit court be the governing body, would it not be proper to include the cost for the bond in the yearly budget under class two. I am presuming that you referred to Section 5, page 344, Session Laws of 1933, of the County Budget Act. In construing statutes, all sections should be read together and as the County Budget Act does not specifically set out the payment of surety bonds, it would be unlawful for the county court to allocate money to the department for the payment of the premium on surety bonds where the special Section 1, page 190 of the Session Laws of 1937, specifically state that the premium on the bond must be paid by the public body protected thereby.

Section 11786 R.S. Mo. 1929, was amended by page 446 of the Session Laws of 1937 bearing the same section number and among other things, provides:

"***** It shall be the duty of such Circuit Clerk and ex-officio Recorder of Deeds, upon the filing of said report, to forthwith pay over to the County Treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the County Clerk, and every such Circuit Clerk and ex-officio Recorder of Deeds shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the County treasury as herein provided: *****."

Under this section as amended, it is the duty of the circuit court to pay over to the county treasury moneys collected by him monthly. In view of this section, the circuit clerk does not pay over moneys

collected by him to the circuit judges, but to the county treasury which is the collecting body of the county court. The surety bond given by the circuit clerk is to protect the county court and the county treasury and not the circuit judge or judges.

To insure the payment of the money collected by the circuit clerk to the county treasury, a bond is required as set out in Section 11666 R.S. Mo. 1929:

"Every clerk, before he enters on the duties of his office, shall enter into bond, payable to the state of Missouri with good and sufficient securities, who shall be residents of the county for which the clerk is appointed or elected, in any sum not less than five thousand dollars, the amount to be fixed and the bond to be approved by the court of which he is clerk, or by a majority of the judges of such court, in vacation. The bond shall be conditioned that he will faithfully perform the duties of his office, and pay over all moneys which may come to his hand by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, records, papers, seals, apparatus and furniture belonging to his office."

All that this section requires from the circuit judges is that they must approve the bond and in case of a personal bond, approve the surety on the bond.

Section 11668 R.S. Mo. 1929 provides:

"The certificate of the election of any clerk, signed by the presiding judge of the county court, and the bond of every clerk, shall be deposited in the office of the secretary of state, with the approval of the court or judges indorsed thereon."

Under Section 11671 R.S. Mo. 1929, the bond of the circuit clerk shall be recorded in the recorder's office in the county,

and then be deposited in the office of the secretary of state.

In construing a statute, the court will first determine the purpose of the statute. In the case of *Betz v. Columbia Telephone Company* (App.) 24 S.W. (2d) 224, the court said:

"To get at the true meaning of the language of the statute the court must look into the whole purpose of the act, the law as it was before the enactment and the change in the law intended to be made."

As before stated, Section 1, page 446, Session Laws of 1937, provided the payment of fees collected monthly into the county treasury and although the circuit judge or judges approve the bond of the circuit clerk, he is not responsible to them for fees collected. The purpose of the act was to protect the county against defalcation and not the circuit court.

Section 36, article VI of the Constitution of Missouri provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

This section must be strictly construed and the county court only can contract for the payment of premiums on surety bonds described under Section 1, page 190 of the Session Laws of 1937.

The powers and duties of the county court under Section 36, article VI of the constitution was upheld in *State ex rel. Bucker v. McElroy*, 274 S.W. 749, where the court said:

"The gist of this case hovers around section 36 of article 6 of the Missouri Constitution for 1875. This section reads:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not

exceeding three, of whom the probate judge may be one, as may be provided by law.'

By law these courts have been established so as to consist of a presiding judge (to be elected by the whole county) and two associate or district judges to be chosen by the electorate of their respective districts. But what we want to emphasize is the fact that the court is of constitutional origin, and its jurisdiction fixed by the Constitution. In the language of the organic law, such court 'shall have jurisdiction to transact all county * * * business.' Other business may be added to its jurisdiction by law, but no law can take from it that which the Constitution expressly gives; i.e., that it shall transact all county business. *****"

County Budget Act, Section 5, page 344, Session Laws of 1933, must be strictly construed and does not provide for the furnishing of surety bonds, and in no event can the premium for the bond be allocated to the yearly budget of the office of the circuit clerk.

CONCLUSION

In conclusion, will say that it is the opinion of this office that the governing body of a county to be protected by a surety bond is the county court and not the circuit court. The fees and other money to be protected by the surety bond are to be paid into the county treasury for the use of the county and under the orders of the county court and not the circuit court.

Therefore, the only procedure for a circuit clerk to obtain a surety bond as provided in Section 1, page 190 of the Session Laws of 1937, is by consent and approval of the county court.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General
WJB:DA