

BANKS & BANKING: )  
COUNTY COURTS: )

Power and authority of County Courts to  
compromise with bondsmen on depository bond.

1-15  
January 14, 1935.



Hon. O. H. Moberly  
Commissioner of Finance  
Jefferson City, Missouri

Dear Mr. Moberly:

This is to acknowledge receipt of your letter of  
January 10, 1935, in which you request an opinion on the  
question submitted in your letter; which letter is as follows:

"Re: Waynesville State Bank,  
Waynesville, Missouri.  
Reorganization.

The following provisions are contained  
in the proposed plan for the reorgani-  
zation of the subject bank:

1. County deposits in the amount of approxi-  
mately \$56,000.00 are involved. It is  
proposed that by order of the County Court  
a check will be written for \$30,000.00 in  
the reduction of this deposit and the County  
will receive in return for said check  
approximately \$50,000.00 face value of  
rejected assets of the bank, in consideration  
of which the depository bond securing the  
County, executed by the bank and certain  
individuals, will be released. In your  
opinion will this release the bank from all  
liabilities, contingent or otherwise,  
resulting from such transaction?
2. In further consideration for releasing the  
personal bondsmen on the present depository  
bond of the bank, the bondsmen now indemni-  
fying the County on behalf of the bank will  
execute a bond in favor of the County, in  
effect guaranteeing the payment of the  
\$30,000.00 secured by rejected assets. In

your opinion will the bondsmen be legally held under a bond of this character?

You understand, of course, that upon consummation of the plan approved by all parties, the remaining deposits of the County, amounting to approximately \$26,000.00, will be available.

Will you please send a copy of your opinion direct to Mr. T. O. Carver, Prosecuting Attorney, Waynesville, Missouri."

The question asked in the first sub-division of your letter is as follows: Will this release the bank from all liabilities, contingent or otherwise, resulting from such transactions?

In the second sub-division of your letter you ask the following question: In your opinion will the bondsmen be legally held under a bond of this character?

The two questions propounded in your letter are so inter-related and revolve around the question as to the power of the county court to subscribe to and agree to the arrangement for the compromising and settling of its deposit claim in a restricted bank, that we shall undertake to answer your questions in one conclusion.

County courts were created by the Constitution as provided in Section 36, Article VI, which is as follows:

"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."

It will be seen that the county court shall have jurisdiction to transact all county and such other business as may be prescribed by law.

Section 2078, R. S. Mo. 1929, provides as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 12105, R. S. Mo. 1929, provides as follows:

"All notes, bonds, bills, contracts, covenants, agreements or writings made whereby any person shall be bound to any county, or to the inhabitants thereof, or to the governor, or to any other person, in whatever form, for the payment of money or any debt or duty, or the performance of any matter or thing, for the use of any county, shall be valid and effectual to vest in such county all the rights, interests and actions which would be vested in any individual, in any such contract made directly to him."

The effect of this agreement and compromise, as set out in your letter, between the Waynesville State Bank and the signers of the depository bond of the Waynesville State Bank, and the County Court of Pulaski County, would be the compromise of said deposit of \$56,000 in said bank by the county in the following manner:

If, and when, said bank is reorganized, and of course said agreement is contingent upon the reorganization of said bank and approval by the Commissioner of Finance of the State of Missouri of the reorganization plans, \$26,000.00 of said deposit would be immediately available for the use of the county

court, and for the balance due, to-wit, the sum of \$30,000.00, the bank would transfer to the county court by proper assignments \$50,000.00 face value of rejected assets of the bank, and in further consideration for the releasing of the bondsmen on the present depository bond of said bank, these bondsmen would execute and deliver to the county court a bond or obligation guaranteeing the payment of said \$30,000.00, the unpaid portion of the county's deposit secured by the rejected assets transferred to the county court.

We are assuming that the \$56,000.00 on deposit with the Waynesville State Bank of the county funds have been let to the bank in accordance and compliance with all of the statutes pertaining to the letting of public funds and that the county would not have a preferred claim against the bank in the event of liquidation.

The county court has the power to transact all county and such other business as may be prescribed by law.

The Supreme Court in the case of Railway Company v. Anthony, 73 Mo. 431, l. c. 434, said the following:

"The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less. The taxes were levied for the benefit of the county. The beneficial interest was in the county, and it is for the public interest that she should have the right to settle, by compromise, questionable demands which she may assert. Must the county prosecute doubtful claims at all hazards, regardless of costs and expenses, and is it for the public good that the right to settle such demands by compromise be denied her? As was said by the supreme court of New York in the case of the Board of Supervisors of Orleans Co. v. Bowen, 4 Lansing 31: 'It would be a most extraordinary doctrine to hold that because a county had become involved in a litigation, it must necessarily go through with it to the bitter end, and has no power to extricate

itself by withdrawal or by agreement with its adversary.' The same doctrine was sanctioned in the *Supervisors of Chenango County v. Bidsall*, 4 Wend. 453."

If, as stated in the above case, the county court has the power to accept satisfaction of a demand sued for, whether the precise amount demanded or less, it would seem that the county court would have the right to settle and compromise a doubtful claim and obligation in favor of the county on the best terms obtainable under all the circumstances, acting at all times in good faith for the best interests of the county.

Judge Faris, District Judge in the United States District Court, Eastern District of Missouri, Eastern Division, in the case of *State of Missouri ex rel. Brewer v. Federal Lead Co.*, 265 F. 305, 1. c. 310, referring to Section 36, Article VI, of the Constitution of Missouri, said the following:

"It is also obvious that the above constitutional provision, in conferring upon the county courts of the several counties power to transact 'all county business,' has the effect of making such county courts the general agents of the counties. If this view is correct, it is clear that the above statute and the constitutional provision above quoted have a very important bearing upon the issues presented in this case. For, absent some statutory inhibition, and I know of none, and subject to some prohibitions of the Constitution of Missouri not here relevant, the county courts are authorized to deal with all county business just as any other general agent of an individual principal might do."

The following was said in the case of *Sheidley v. Lynch*, 95 Mo. 487, 1. c. 497:

"So in the case of *H. & St. J. R. R. Co. v. Marion County*, 36 Mo. 303, it is said that the county court is the agent of the county, and may lawfully and of a right do whatever is necessary to carry out and execute the

January 14, 1935.

trusts reposed in it. So in the case of Walker v. Linn County, 72 Mo. 650-3, it is said: 'That a county court is invested with such powers only as are expressly conferred upon it by statute, or such as may be fairly and necessarily implied from those expressly granted, we think cannot be questioned.'

Coming now to the precise question in the first sub-division of your letter, it is our opinion that the bank would be released from all liabilities under the depository bond now in force and effect, upon the final completion of the agreements.

As to the question in the second sub-division of your letter we are of the opinion that a bond or obligation could be drawn and executed by the bondsmen, who are to be released from the present depository bond, which would be binding on said bondsmen so signing to secure the \$30,000.00, the balance of the deposit due from the bank to the county. Of course, we are not passing upon the question of the advisability of the county court entering into the agreement proposed as above but only as to the power and authority of it to do so.

It is, therefore, our conclusion that the county court may, in the exercise of its sound discretion and at all times acting in good faith for the preservation of the moneys belonging to the County of Pulaski, enter into agreements whereby the above arrangement would be effected.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

---

ROY MCKITTRICK  
Attorney-General.

CRH:EG