April 24, 1933

Hon. G. T. Myers
Missouri House of Representatives
Jefferson City, Missouri

Dear Mr. Myers:

Your letter of April 8, 1933, requesting an opinion from this office, is at hand. I quote from your letter:

"The question involved is whether or not a bank outside of the county seat may be designated as the county depository as there seems to be a little difference of opinion as to cashing and paying of county warrants?"

Section 12189 R.S. Mo. 1929 provides:

"If, for any reason, the banking corporations, associations or individual bankers in any county shall fail or refuse to submit proposals to act as county depositories as provided in Section 12185, then, and in that case, the county court shall have power to deposit the funds of the county with any one or more of the banking corporations, associations or individual bankers in the county or adjoining counties, * * *."

Section 12184 R.S. Mo. 1929 provides:

"* * * 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: Provided, also, that in all cases of the letting of township funds, three notices posted in three public places by the township clerk will be a sufficient notice of such letting."

In Denney v. Jefferson County, 272 Mo. 436 l.c. 449,
the Supreme Court said:

> "Whether or not the county court acted within
> its discretionary power in awarding this
> contract involves consideration of the
> statute under which it acted. It is not
> contended that its discretion was judicial
> in character, that is to say, such discre-
> tion as is possessed by courts whose juris-
> diction is founded upon notice and opportunity
> to be heard. The county court, notwithstanding
> its name, is, in this matter, merely an adminis-
> trative agency of the county, possessing this
> power in common with the township boards.
> (R.S. 1909, Sec. 3803). As in case of all
> public officers, its official acts carry with
> them the presumption that it has done its duty,
> until the contrary is made to appear. But this
> presumption only applies to acts within its
> administrative powers done in pursuance of the
> legislative purpose. Where this power depends
> upon specific facts, their exercise may always be
> controverted, and insofar as it is founded upon
> the exercise of judgment, it must be exercised
> in good faith, reasonably and with regard to
> the legislative purpose."

> "It goes without saying that the purpose of this
> law is to obtain for the public the largest
> available income from its funds. Their safety in
> the hands of the depository is required to be
> safeguarded by ample security in addition to
> the responsibility of the bank, and it cannot
> be possible that the Legislature intended to
> revoke its simple and peremptory command, and
> by this proviso to substitute a power in the
> county court to do whatever it might desire to do.
> * * * This discretion may also be of use in many
> ways affecting the safety or availability of the
> funds. * * * But it can never be permitted to
> substitute a purpose of the court for the
> expressed purpose of the Legislature, and must
> always be exercised 'in good faith and with due
> regard for the best interest of the county'.
> As we have already stated, we see no reason for
> interfering with the finding of the court in
> this respect, and it follows that the award of
> the county court was properly set aside."

It is the opinion of this office that a bank outside the county seat in an adjoining county may be designated as the county depository. The limitation placed upon county courts is that in the selection of a depository they must act in good faith and with due regard to the best interest of the county. Such was the holding in the Denney case.

Let me hear from you if I have not fully answered your question.

Respectfully yours,

Wm. ORR SAWYERS,
Assistant Attorney General

APPROVED:

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Attorney-General

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