DEPOSITORIES: A county cannot pay bonus or fee to
COUNTY DEPOSITORIES: county depositories for taking care
BANKS AND BANKING: of county funds.

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May 13, 1943

Mr. Onie D. Newlon
Prosecuting Attorney
Ralls County, Missouri
New London, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of
May 11th, 1943, in which you request the opinion of this
department. Your letter of request is as follows:

> "The Perry State Bank of Perry, Missouri,
> being the only bank in Ralls County,
> Missouri, has been by the County Court
> designated as the County Depository for
> all County funds.

> "The Bank is willing to receive and han-
> dle all the County money, but refuse to
> give the Statutory Bond unless the County
> Court will agree to pay said bank a gross
> yearly fee of $300.00 for handling all
> the County money. Banks in other counties
> are willing to receive the money, but re-
> fuse to give the statutory bond required
> of depositories, but offer to carry the
> money at no expense to the County, the same
> as the Perry State Bank. Of course, the
> sureties on the bonds of the County Treas-
> urer and the County Collector will go off
> their bonds unless there is established a
> legal depository for said county funds.

> "In view of all of these circumstances, we
> would like an opinion from you as to
> whether or not the County Court could audit

and allow a fee or charge in the sum
of $300.00 per year in favor of said
Perry State Bank in payment of their
services as such a legal depository for
all county funds."

After stating the facts as set forth, you desire to
have our opinion as to whether or not the County Court may
legally pay the Perry State Bank, of Ralls County, Missouri,
$300 per year for their services as a legal depositary for
all of the county funds.

Under the provisions of our statutes, Article 9,
Chapter 100, R. S. Mo. 1939, Sections 13846 to 13861, in-
clusive, there is set up a special procedure for the selec-
tion of the county depositary, or depositaries.

Section 13846 provides in part that the county court
at the May term in the odd years shall receive proposals
from such banking corporations, associations and individual
bankers, as may desire to be selected as depositaries of the
funds of said county.

Section 13848 sets forth in detail how the various
banking associations may proceed to submit their bids and
the rate of interest that they will pay for the county funds.
Under this section the depositary is selected for a period
of two years.

Section 13849 provides for the opening of the bids by
the county court on the first day of the May term of the odd
years.

Section 13850 provides that after the selection of the
depositary by the county court the selected depositary shall
give bond for the security of the funds.

Section 13852 sets forth a procedure where, in the event
no bids are submitted, as provided in Section 13848, the
county court shall have the power to deposit the county funds
with any banking corporation, association or individual
banker as the court may deem advisable, and at a rate of
interest agreed upon to be paid by the depositary, but not
less than one and one-half per centum on the daily balances
of such depositary.

Section 13854 provides for the letting of portions of the county money not bid for by the various banking corporations or associations and provides for readvertisement and reletting of the funds of the county.

This brief summary of the procedure for the letting of the county funds presupposes a rate of interest of not less than one and one-half per cent for the use of the county money.

As is well known, after August 23rd, 1937, under the provisions of the Federal Reserve Act, Title 12 U. S. C. A., Sec. 371a, page 564, it is provided:

> "No member bank shall, directly or in-
> directly, by any device whatsoever, pay
> any interest on any deposit which is
> payable on demand: * * * * * * * * * *"

Contemporaneous with the effective date of the Federal Act referred to above the General Assembly of Missouri enacted a statute which became effective September 6, 1937, and is now Section 7984, R. S. Mo. 1939, which provides that no bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposits of money, public or private, which are payable on demand, at a rate of interest in excess of the then rate of interest authorized by the laws of the United States of America or by regulations issued under authority of such law, to be paid on such deposit by member banks of the Federal Reserve system or by banks whose deposits are insured by the Federal Deposit Insurance Corporation. Therefore, it is unlawful for any bank (or trust company, Section 8064, R. S. Mo. 1939) to pay interest on public funds. And public funds, which include county funds, come within the provisions of the Federal and State statutes and banks are not permitted to pay interest on said funds.

After the enactment of the Federal law above referred to, and in 1937, the General Assembly of Missouri passed what is now Article 9, Chapter 39, Sections 8183 to 8188, inclusive, R. S. Mo. 1939, providing that the public funds of the various political subdivisions of the state, which include the public funds of counties, must be secured by the depositary in the same manner as the State funds deposited by the

State Treasurer are secured, under the provisions of Articles
1 and 2, of Chapter 87 of the Revised Statutes of Missouri
for the year 1939, and all amendments thereto. It is not
necessary to set forth the procedure for the safeguarding of
public funds under this act, for the reason that it is not
essential to the determination of your question.

Section 8185, R. S. Mo. 1939, provides as follows:

> "The various statutory provisions in
> relation to the advertisement for and
> receipt of bids and the award of the
> funds to the best bidder or bidders for
> the whole or any part of any of the public
> funds of the character referred to in Sec-
> tion 8183 shall be applicable only if and
> when, at the time of said advertisement
> and award, it shall be lawful for banking
> institutions to pay interest upon demand
> deposits, in which event such applicable
> statutory provisions shall be complied
> with; but if, at the time of the adver-
> tisement for bids or the receipt of bids
> or the award of funds, it shall be unlaw-
> ful for depositary banks and trust companies
> to pay interest upon such demand deposits,
> the award or awards of such funds shall be
> made in each case, without bids and without
> requiring the payment of any bonus or inter-
> est, by the authority or authorities which
> are by statute empowered to make the awards
> of such funds upon bids."

It will be observed by the above quoted section that
when it shall be unlawful for banks to pay interest upon
demand deposits the depositary may be selected without bids
and without requiring the payment of any bonus or interest.

Section 8186 provides that if no banking corporation,
association or trust company shall be selected by the govern-
ing authorities they shall go outside the territorial limits
and select a depositary which the authorities may deem the
safest and most convenient depositary or depositaries for such
public funds.

Since, under the present state of the law, banking corporations, associations and trust companies cannot pay interest on public funds, you now desire to know whether or not the County may pay the selected depositary, or depositaries, a bonus or fee for the handling of the county funds, and, in your case, the sum of $300.00 per year. There being no authority of law to pay the bank in question for safeguarding and protecting the public funds if the County should make such payment it would be an unauthorized act.

CONCLUSION

It is, therefore, the opinion of this department that the County Court of Ralls County, Missouri, would have no authority to pay the bank in question the sum of $300.00 annually to safeguard and protect the public funds of that county, and that, if such payment is made it would be without authority of law, and, therefore, an unauthorized act.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

CRH:CP