

SHERIFF: Bond - County court liable for premium  
on surety bond when approved by  
county court.

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April 6, 1943

H-21



Honorable Curtis J. Quimby  
Prosecuting Attorney  
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Jefferson City, Missouri

Dear Sir:

We are in receipt of your request, under date of April 2, 1943, for an opinion relative to the question of whether or not a surety bond, given by a sheriff is governed by Section 3238 R. S. Missouri, 1939. You also suggest that since the bond of a sheriff is approved by the circuit judge, and not by the county court, that the county should not be liable where the sheriff elects to give a surety bond, under Section 3238, supra, and the county court approves said bond.

Section 3238 R. S. Missouri, 1939, partially reads as follows:

"Whenever \* \* \* any officer of any county of this state, \* \* \* shall be required by law of this state, or by charter, ordinance or resolution, 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 state, department, board, bureau, commission, official, county, city, town, village, or other political subdivision, 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."  
(Underscoring ours.)

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Section 13127 R. S. Missouri, 1939, reads as follows:

"Every sheriff shall, within fifteen days after he receives the certificate of his election or appointment, give bond to the state in a sum not less than five thousand dollars nor more than fifty thousand dollars, with sureties approved by the circuit court, conditioned for the faithful discharge of his duties; which bond shall be filed in the office of the clerk of the circuit court of the county."

Under Section 13127, supra, the sureties on a sheriff's bond must be approved by the circuit court. There is nothing said as to the giving of a surety bond in that section, and under Section 3238, supra, which is a later section, if the county court agrees to the giving of a surety bond by the sheriff then it is only necessary that the circuit court approve the surety.

The sheriff is a county officer. It was so held in the case of *State v. Williams*, 114 S. W. (2d) 98, Pars. 7-8, where the court said:

"A sheriff is indeed a 'public officer.' We hold he is a 'county officer' within the meaning of this section. The statements in *State v. Finn*, 4 Mo. App. 347 and *State ex rel. Attorney General v. McKee*, 69 Mo. 504, to the effect that a sheriff is a state officer are mere obiter dicta. In *State ex rel. Holmes v. Dillon*, 90 Mo. 229, 2 S. W. 417, we held that the words 'state officer' as used in the constitution were intended to refer to such officers whose official duties and functions are co-extensive with the boundaries of the state and were never intended to refer to a sheriff whose functions are confined to his county

and who is commonly known and called a county officer. We there distinguished the McKee case, supra. We again ruled that a sheriff is not a state officer in State ex rel. Bender v. Spencer, 91 Mo. 206, 3 S. W. 410, and approved the above holding in the Holmes case."

Section 3238, supra, was construed in the case of Motley et al. v. Callaway County, 149 S. W. (2d) 875, 1. c. 876. The court, in that case, in commenting on the section said:

"Public funds have long been used to furnish public officers with office space, stationery, postage stamps, and office supplies. The matter of furnishing bonds is surely analogous. A bond is 'in effect merely collateral security for the faithful performance' by an officer, a duty he owes the public in any event, in order to protect the public from loss. 22 R. C. L. 497, sec. 176. Personal bonds have many known disadvantages and deficiencies, which it is unnecessary to discuss here. The Legislature, no doubt taking notice of the results of some of these during recent depression periods, considered that surety company bonds could give better protection to public funds in the custody of public officers. It, therefore, authorized such a bond for county officers if the officer elected to furnish it and the county court approved it. It also recognized that to require an officer to pay the premiums therefor would have the effect of reducing his actual net compensation. So when consent and approval for the offi-

cer to purchase such a bond at public expense was given in advance by 'the public body protected,' it was required to pay the cost. No one has ever contended that payment of salaries to officers, instead of requiring them to collect fees from those to whom they render service, is not a public purpose. We see no difference in principle between the use of public funds in payment of officers' salaries and authorizing their use to pay bond premiums, instead of requiring the officer to pay these himself; or to beseech other private citizens to personally guarantee his faithful performance. It will not always be in the public interest to create a situation in which a public officer may be placed under greater obligations to certain private citizens (who furnish his bond) than to the public generally. At least, we think it is within the discretion and authority of the Legislature to say which is the best public policy. \* \* \* \* \*

The 1937 Act only authorized the county to make an agreement for this type of bond, and, if it did so in advance, to pay for it when it was furnished. \* \* \* \* \*"

Under the last quotation it specifically held that the 1937 Act, which is now Section 3238, supra, only authorized the county to make an agreement for this type of bond, and, if it did so in advance, to pay for it when it was furnished. The question as to who approves the bond is not in issue under this section. The only question is, whether or not the governing body, which in this case is the county court, makes an agreement for this type of bond. The bond of a county collector is partially approved by the state auditor, but, nevertheless, the county collector is a county officer, and, if the county court, upon the election of the county collector to give a surety bond, approves such a bond, they, as the governing body of the county are liable for the premium, providing the election and approval

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is made before the furnishing of the bond.

CONCLUSION

It is, therefore, the opinion of this department, that if a sheriff elects to give a surety bond instead of a personal bond with sureties approved by the circuit court, and the county court, which is the governing body of the county approves the giving of such a bond in advance, the county court will be liable for the premium.

It is further the opinion of this department, that Section 3238 R. S. Missouri, 1939 is only an act authorizing the county to make an agreement for the giving of a surety bond, and if it agrees to such a procedure in advance, to pay for it when it is furnished.

Respectfully submitted

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APPROVED BY:

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ROY McKITTRICK  
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