

DEPOSITARIES: Money deposited in depository by county
COUNTY FUNDS: collector, as collector, is "Public Funds."

March 8, 1943

Honorable George A. Spencer
Prosecuting Attorney
Boone County
Columbia, Missouri

3-10



Dear Sir:

This is in reply to your request for an opinion,
which reads as follows:

"In checking over the contract the city has for its depository, there does not seem to be sufficient bonds put in escrow by the banks to conform to the law. In considering the matter, however, the question comes up as to whether the funds placed in the banks by the collector, and before they are turned over to the treasurer, are county funds when under the collector's name. In other words, couldn't the contract with the depositories be that the bonds securing the funds shall be an amount equal to the funds on deposit, less \$5,000, by both the collector and the treasurer? There was some feeling in the conference that the collector's funds were not county funds as would be covered by the law. I suppose you have made some rulings relative to this matter, and I would like to have a copy of the same.

"A further question arises in my mind which is as follows: If the county divided its funds into five different funds in each bank, the figure five being just an example as it might be four or eight,

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would not the FDIC insurance carried by the bank cover \$5,000 under each fund so long as those funds were funds used for wholly different purposes and not just being a division of funds belonging to particular purposes.

"I am not wholly acquainted with the system of funds of counties, but I am making an analogy to the funds of a city such as the general revenue fund, automobile license funds used for street purposes, and water and light funds used for other utility funds."

By a supplemental letter, you have informed this office that your inquiry is as to, "County Depositories," and not, "City Depositories."

Your request consists of two questions, first: Whether or not the funds placed in the county depository by the collector, before they are turned over to the treasurer, are county funds. We are assuming that these funds are placed in the county depository under the name of the collector, as county collector.

Your second question is: Whether or not, if the county divided its funds into five different funds in each bank, the FDIC insurance carried by the bank would cover \$5,000 under each fund, so long as those funds were funds used for entirely different purposes, and it not being just a division of funds belonging to particular purposes.

In answer to your first question, we set out parts of Article 9, Chapter 100, of the Revised Statutes of Missouri, which refer to "County Depositories."

Section 13846 R. S. Missouri, 1939, partially reads as follows:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year

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1909, and every two years thereafter, to receive proposals from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositaries of the funds of said county. For the purpose of letting such funds such county court shall, by order of record, divide said funds into not less than two nor more than ten equal parts, and the bids herein provided for may be for one or more of such parts. * * * * *

Under the above partial section the court, by order of record, may divide said funds into not less than two, nor more than ten equal parts, and the bids may be asked upon one or more parts. This refers to units of the county funds, and not to separate individual funds.

Section 8183 R. S. Missouri, 1939, which can be construed as an amendment to Section 13846, supra, reads as follows:

"Notwithstanding any provisions of law of this state or of any political subdivision thereof, the public funds of every county, * * * * * which shall not or hereafter be deposited in any banking institution acting as a legal depository of such funds under the provisions of the Statutes of Missouri requiring the letting and deposit of the same and the furnishing of security therefor, shall be secured by the said legal depository making deposit, as hereinafter provided, of securities of the same character as are required by Section 13086 and all amendments thereto for the security of funds deposited by the State Treasurer under the provisions of Article 1 and 2 of Chapter 87 of the Revised Statutes of Missouri 1939, and all amendments thereto. * * * * *

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Section 8185 R. S. Missouri, 1939, provides that the various statutory provisions in relation to the advertisement for, and receipt of, bids, which provide for the payment of certain interests by the banks and other miscellaneous provisions shall not apply where, under the law, said banks are prohibited from paying interest upon demand deposits. At the present time banks are not allowed to pay interest on demand deposits, and for that reason it is not necessary that the counties advertise for offer of bids on county deposits, where said deposits are made in banks which are not allowed, by law, to pay interest on such deposits, but, under Section 8184, supra, it is still mandatory that the security for such deposits must still be required.

Article 9, Chapter 39, which contains Sections 8183, 8184 and 8185, as above referred to, must be harmonized with Article 9, Chapter 100, which refers to county depositaries and does not repeal the entire article referring to county depositaries.

In construing statutes the Supreme Court of this State, in the case of State v. Brown, 105 S. W. (2d) 909, l. c. 911, said:

" * * * So far as reasonably possible the statutes, although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms, nor will it be presumed that the Legislature intended to leave on the statute books two contradictory enactments.' 16 Cyc. 1147. We approved the above excerpt in State ex rel Columbia National Bank v. Davis, 314 Mo. 373, 284 S. W. 464."

Also, in the case of Eagleton v. Murphy, 156 S. W. (2d) 683, l. c. 685, the court said:

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" * * * Under the established rules of statutory construction where there are two laws relating to the same subject they must be read together and the provisions of the one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms. State ex inf. Barrett v. Imhoff, 291 Mo. 603, 238 S. W. 122; State ex rel. Buchanan County v. Fulks, 296 Mo. 614, 247 S. W. 129. * * * *"

In your first question you inquire if the funds deposited by the county collector, as county collector, in the county depository, are public funds, as set out in Section 8183, supra. This State has not specifically passed upon this point, but did, in the case of State v. Igoo, 107 S. W. (2d) 929, l. c. 933, define "Public Funds." It stated:

"Are the funds created by this section public funds within the meaning of the constitutional provision which prohibits the granting of public money to a private corporation? We think not. 50 C. J. p. 854, sec. 40, defines public funds as follows: 'The term "public funds" means funds belonging to the state or any county or political subdivision of the state; more especially taxes, customs, moneys, etc., raised by operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose * * * * * .'

"The case of State ex rel. v. Olson, State Treasurer, 43 N. D. 619, 175 N. W. 714, 715, 716, defines 'public funds' thus: 'The money referred to in said section is money belonging to the state, which has been accumulated in the treasury as public funds,

which are to be used in carrying on the state government. It means such money as is raised by taxation, or which has accumulated in the treasury by the payment of fees authorized by law to be charged for various purposes.'"

Under this definition, the money deposited in the county depository, by the county collector, as county collector for the county, could be held to be public funds.

In the State of Texas, in the case of Austin, Banking Commissioner, et al v. Kiser, 277 S. W. 411, the county collector was attempting to recover money deposited by him, as county collector, in a bank, under what is known in Texas as "The Bank Guaranty Fund," but the act under which the Bank Guaranty Fund was created contained the following exceptions:

"That no deposit upon which interest is being paid or contracted to be paid, either directly or indirectly by said bank, its officers or stockholders to the depositor and no deposit secured in any way shall be insured under this chapter. * * * No deposit of public funds of any kind or character, whether interest bearing or not, deposited in a state bank, shall be insured under this chapter, by the term "public funds" as herein used, shall be meant, funds belonging to the state of Texas, to any county or political subdivision of the state, * * * * ."

The court, in holding that the county collector, by placing the money in the bank under his official title was depositing "Public Funds," said: (l.c. 412)

"The majority are of the opinion that appellee is clearly not entitled to have his commission upon the January

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collections established as a deposit secured by the guaranty fund for the reason that at the time the bank failed such commissions were public funds, interest bearing, and secured by the depository bond. We think this conclusion necessarily follows upon a consideration of our statutory provisions."

CONCLUSION

It is, therefore, our opinion, that the money deposited by the county collector, as county collector, in the depository for public funds, is deposited in a depository that is covered by the insurance of FDIC, in the amount of \$5,000, and that amount of money can be deducted from the amount of security as required under Section 8184, supra. We would suggest, however, that the bond show that it covers "Public Money."

It is further the opinion of this department, that since Section 13846, supra, only provides for the division of the funds to be deposited in separate and different banks, we find no statutory authority allowing the funds to be deposited in the same bank, under different names, as set out in your request. This is applicable to cities only. We distinguish the difference between the fund of the collector and other funds in that, under Section 11098 R. S. Missouri, 1939, the collector is in charge of public funds, and makes monthly statements and payments to the county treasurer. This section being similar to the section concerning the duties of the county collector, as set out in the case of Austin v. Kiser, supra.

APPROVED BY:

Respectfully submitted

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WJB:RW