

COUNTY OFFICERS: County court is only liable for premiums
BONDS: on a surety bond furnished by the circuit
CIRCUIT CLERKS: clerk when it consents and approves the
payment of the premiums. The bond may
extend past the term of the county judge.

September 11, 1941

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Honorable Arthur Duvall
Prosecuting Attorney
Bates County
Suite 200
First National Bank Building
Butler, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of September 5, 1941, which reads as follows:

"Our Bates County Court has been presented a proposition with respect to which I would appreciate advice.

"The situation is this: The Circuit Clerk of Bates County has elected to and furnished Surety Company Bond for the sum of \$5,000.00, upon which bond the Clerk paid the premiums for the years 1935 to 1941 inclusive.

"The Circuit Clerk has presented the County Court bill asking to be reimbursed for the premiums paid by him to the Surety Company for the years 1935 to 1941 inclusive. The Court stands ready to pay the premium for the current year but raises a question as to whether or not the County is liable for or should make an order directing payment or reimbursement to the Clerk for the years 1935 to 1940 inclusive, which is prior to the tenure of office of two of the members of the present County Court.

"I should greatly appreciate your advice as to whether or not the court

should order payment of the back premiums, or whether the proper method should be that the Clerk institute suit against Bates County to recover the premiums so paid."

Under Section 13285, R. S. Missouri 1939, the circuit clerk of a county is compelled to furnish a bond to protect persons interested in money received by him.

Section 3238, R. S. Missouri 1939, provides in part as follows:

"Whenever any officer * * * * of any county of this state, * * * * shall be required by law of 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 * * * * county, * * enter into a surety bond, * * with a surety company * * 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."

Under the above partial section it is very noticeable that before the county is liable for the premiums paid on a surety bond by a county officer, it is first necessary that the officer elect to furnish a surety bond and the county to consent and approve to the giving of a surety bond at the cost of the county.

In your request you do not state whether or not the previous county courts have consented to and approved of a circuit clerk furnishing a surety bond in lieu of a personal bond. You also state that the circuit clerk has presented the county court a bill asking for reimbursement for the premiums paid in the years 1935 to 1941, inclusive. The above section 3238, supra, was first enacted and appears in the Session Laws of 1937, page 190, Section 1. For that reason the county court cannot pay the premiums on the bond for any other years previous to 1937.

You also ask in your request if the county is liable

for the premiums when at the time the bond was given the present judges of the county were not then members of the present county court. I am assuming from your request that Section 3238, supra, has not been followed and for that reason the county court is not liable for the premiums on the circuit clerk's bond.

If the previous county courts from the years 1937 to 1941, inclusive, had consented to the circuit clerk giving a surety bond in lieu of personal bonds and agreed to pay the premiums by authority of Section 3238, supra, the fact that members of the present county court were not in office would not alter the situation and the county would be bound. It was held that contracts made by previous county courts which would be in effect for a short time after the county judges had left office were valid. It was so held in the case of *Aslin v. Stoddard County*, 106 S. W. (2d) 472, 1. c. 476, where the court said:

"In *Walker v. Linn County*, 72 Mo. 650, the county court, through an appointed agent, insured county property for a period of five years. Point was made, on demurrer, that the court had no power to make the contract. This court held that the county court, under its statutory authority to 'have the control and management' of the county's property and its statutory duty to 'take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage,' had the implied authority to insure the buildings belonging to the county. The contract was held valid. The question of the time of performance as extending beyond the terms of office of the then members of the court was not raised and was not discussed in the opinion, and that case therefore can hardly be considered authority one way or the other on the point we now have under consideration. But, if thought of at all, the time factor must have been regarded by the court as not affecting the validity of

the contract. And, whether considered or not in that case, can it be doubted that the county court, empowered to insure the county property, could lawfully make a contract for insurance extending beyond the terms of office of its then members, if such contract was made in good faith and was (perhaps because of a lower annual premium than for a short period) advantageous to the county? We think not. Other illustrations might be given. In our opinion, a county court has power to make a contract such as that here in question, for a reasonable time, the performance of which will extend beyond the term of office of some member or members of the court. We so hold."

CONCLUSION

By reason of the above authorities, it is the opinion of this department that if the circuit clerk did not elect to give a surety bond in lieu of a personal bond and the county court did not consent and approve the giving of such a bond, then the county court, or the public body protected by the bond, would not be liable for the premiums on the bond.

It is further the opinion of this department that since Section 3238, R. S. Missouri 1939, was not in effect previous to 1937, the premiums previous to 1937 must be paid by the circuit clerk and not the county court.

It is further the opinion of this department that the county court can consent and approve the giving of a surety bond in lieu of a personal bond and the county would be liable even if the bond extended to the full term of the officer and to a time after members of the county court had left office.

Respectfully submitted

APPROVED:

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