

COUNTY COURT AND
COUNTY DEPOSITARIES:

County funds can only be placed
in a legally designated and
qualified county depository.

November 24, 1942

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Hon. Robert W. Hawkins
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
under date of November 18, 1942, which reads as follows:

"Will you kindly advise me for the use
of Pemiscot Co. Court how they can dis-
pose of surplus money belonging to the
school fund and the County when the
banks refuse to accept any more money
and give legal security for the same.

"The County has some \$90,000 of school
money on hand and cannot loan it as the
law directs.

"The bonding companies say they will
cancel the collectors and treasurers
bonds if the County cannot get relief
from some source."

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
1909, and every two years thereafter,
to receive proposals * * * ."

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The above partial section is mandatory upon the county court, and there is no exceptions in that section. It was so held in *Huntsville Trust Co. v. Noel et al.*, 12 S. W. (2d) 751, l. c. 754, par. 3, where the court said:

" * * * As heretofore stated, all county funds are required by law to be deposited in a county depository. The officers of the county charged with duties relating to the deposit of such funds for safe keeping are agents of limited powers, and as such they have no authority to deposit these public moneys with any other than a county depository. Now a bank or trust company does not become a county depository merely by being designated as such in an order of the county court; it must qualify as a depository by giving the security prescribed by section 9585. If, therefore, the trust company had not so qualified on June 27, 1927, the deposit of the county funds with it was unlawful; and it, in receiving such funds under color of being a county depository, wrongfully obtained possession of them. The county moneys so obtained thereupon became, in the hands of the trust company, a trust fund by operation of law.
* * * * *

That it was mandatory was also held in the case of *Howard County v. Fayette Bank*, 149 S. W. (2d) 841, par. 5, where the court said:

"Was the failure to publish the notice for bids 20 days before the first day of the regular May term fatal to the legal selection of a county depository? The statutory requirements relative to the selection of a county depository are mandatory and 'failure of compliance prevents title to the public funds passing to the bank and the relation of creditor and debtor arising', but 'a literal compliance with all the statutory provisions is not required, if no public or private right is prejudicially affected.' Liquidation of People's Bank, 344 Mo. 611, 127 S. W. 2d 669, loc. cit. 671, and cases there cited."

Section 13848 R. S. Missouri, 1939, provides the procedure for the bidding of banking corporations or individual bankers in the local county on the accepting of county funds.

Section 13850 R. S. Missouri, 1939, partially reads as follows:

"Within ten days after the selection of depositories, it shall be the duty of each successful bidder to execute a bond payable to the county, to be approved by the county court and filed in the office of the clerk thereof, *
* * * * *"

Section 13852 R. S. Missouri, 1939, provides that if for any reason the local banking corporations of the county shall fail or refuse to submit proposals to act as county depository, then the county court would have the power to

to deposit the funds of the county with one or more banking corporations in an adjoining county. It also limits the rate of interest in an adjoining county and the same procedure must be followed as followed in the local county.

Section 13846 R. S. Missouri, 1939, which applies to local banking corporations acting as county depositaries, and Section 13852 R. S. Missouri, 1939, which allows the county court to designate banks in adjoining counties as county depositaries are the only two methods of procedure for the designation of county depositaries.

It is common knowledge that some counties are now depositing money in banks that are not designated as county depositaries, for the reason that the banks will not pay the interest as set out in Section 13846, and Section 13852 R. S. Missouri, 1939, for the reason that banks will not give the proper legal security for the deposit of the county funds. Such a procedure is unlawful and does not comply with the County Depositary Act, but it has been held that where county money is deposited in a bank which is not a county depositary and has not been designated as such the bank holds the money as trustee, and in case of a failure of the bank it would be a preferred claim. It was so held in the case of Consolidated School Dist. No. 4 of Texas County v. Citizens' Sav. Bank of Cabool, 21 S. W. (2d) 781, 1. c. 789, where the court said:

" * * * While other jurisdictions vary the rule in a greater or less degree, Missouri follows the rule that, if a trust fund is proved to have been deposited in a mass, and wrongfully and illegally mingled therewith, even though indistinguishable, it may be recovered and taken from the estate of the insolvent, on the ground that it went into, increased and swelled the volume of the insolvent's assets, and it is chargeable against the insolvent estate to the amount of the converted fund as a preferred demand. * * * "

The same holding was had in the case of Fidelity & Deposit Co. of Maryland v. People's Bank, 44 F. (2d) 19, l. c. 21, which is a Missouri case, and the court in that case said, at par. 2:

"In the instances where the banks received from the county treasurer county funds and placed them on deposit when they were not legal county depositories, they became trustees ex maleficio.
* * * * *"

The same holding was also had in School Cons. Dist., No. 10, of Arbyrd v. Wilson, 135 S. W. (2d) 349.

Even though the money deposited in banks that are not legally designated county depositories is a preferred claim, in case of a failure of the bank and loss of public money belonging to the county, the county treasurer would be liable by reason of Section 13861 R. S. Missouri, 1939, which reads as follows:

"The county treasurer shall not be responsible for any loss of the county funds through the negligence or failure of any depository, but nothing in this article shall release said treasurer from any loss resulting from any official misconduct on his part, or from responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him."

Under the above section the county treasurer is not responsible for loss of county funds through negligence or failure of any depository, but if any loss resulted from

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from any official misconduct on his part, or from responsibility for funds of the county, he would be liable if the proper county depository had not been legally selected and the funds deposited therein. That he would be liable in such an event was held in the case of Bragg City Special Road District v. Johnson, 20 S. W. (2d) 22.

In setting out the above authorities we are merely following the legislation as enacted by the legislature, and the opinions of the Appellate Courts of this State. In order to remedy the situation which you find in Pemiscot County, the matter should be taken up with the legislature.

CONCLUSION

It is, therefore, the opinion of this department that under the present law the county court can only dispose of surplus money belonging to the school fund and the county, to a bank legally designated and qualified as the county depository.

It is further the opinion of this department that if the county court should deposit surplus funds in a bank that had not been legally designated as a county depository, and who has not given the proper security for the funds of the county, such a procedure would be illegal.

Respectfully submitted

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APPROVED:

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Attorney General of Missouri

WJB:RW