

- BONDS:
- 1) Payment of premium on surety bond not mandatory on county court.
 - 2) County court not authorized to pay part of bond premium.

January 6, 1944



Honorable E. W. Bennett
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Mr. Bennett:

This will acknowledge receipt of your letter under date of December 29, 1943, wherein you requested an opinion from this Department. This opinion request read as follows:

"1. If an officer of the county elects to furnish a surety bond under Section 3238 R. S. Mo. 1939, must the county court consent thereto and pay the premium on such bond?

"2. If county court consents to a surety bond, upon condition that the officer is to pay a part of the bond premium, does this make the county court liable for all of the premium under the above section.

"The county court of this county requests that I get your opinion on the above points, hence this letter.

"Thanking for such assistance as you can give us, I am,"

Section 3238, R. S. Mo. 1939, in so far as applicable to counties reads:

"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 * * *, to enter into a surety bond, or bonds, 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."

The statute states that 1) if a county official elects to provide a surety bond and 2) the county court consents and approves the election, then the public body protected thereby, in this case the county court, may pay the premium.

In Boatright v. Saline County, 169 S. W. (2d) 1. c. 372, the court said:

"If the statute relied upon did not expressly so state we think it could be justly implied that to render a county liable for a premium on a bond, as the statute contemplates, the bond must be executed for the benefit of the county. However, we need not indulge in any such implication in this case for the statute so provides. Note the concluding portion thereof: '* * * and the cost of every such surety bond shall be paid by the public body protected thereby.'

"The county of Saline was not protected by this bond and therefore it was not one as contemplated by the statute. The statute also provides that the officer, in this case the county collector, may elect, with the consent and approval of a governing body of such county, to enter into a surety bond and the costs shall be paid by the county. It is apparent that the legislature intended the county to be liable only in case the county court consented thereto and approved the giving of such a bond." (Emphasis ours.)

A later case, Cox v. Polk County, 173 S. W. (2d) 680, affirmed the Boatright case by stating that the body to be protected, the county court, must expressly assume liability for payment, in addition to its consent and approval of the bond.

CONCLUSION

It is our opinion that it is not mandatory that the county court consent to and approve payment of the premium on surety bonds under Section 3238, R. S. Mo. 1939. Further, that the statute provides only that the county court, or other

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public body designated therein, may, in effect, only refuse or agree to pay the bond premium.

Respectfully submitted,

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APPROVED:

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