

COUNTY TREASURERS:
TREASURER'S BONDS:
SCHOOL FUND:

} County treasurer to give bond under House
Bill 494 in amount of highest probable amount
on hands at any one time. The amount of bond
computed as to school funds from all sources.

January 13, 1947

Honorable Wayne V. Slankard
Prosecuting Attorney
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Neosho, Missouri



Dear Sir:

We have your letter of January 9, 1947, requesting an opinion from this department, which reads as follows:

"I would like your opinion on the following:

"Under Sec. 10400 (HB 494) the County Treasurer is required to give bond 'in the probable amount of school money that shall come into his hands.'

"Should this amount be the total of all school money regardless of the source, including the capital school fund and all of the various other school funds? In this county all of these funds together would at times total as high as \$250,000.00 although much of this is school money received from the state which is immediately distributed to the various districts by the treasurer."

This request involves the construction of Section 10400 (House Bill 494 of the 63rd General Assembly), which reads in part as follows:

"The county treasurer in each county shall be the custodian of all moneys for school purposes belonging to the different districts, until paid out on warrants duly issued * * * and on his

election, before entering upon the duties of his office, he shall give a surety company bond, with sufficient security, in the probable amount of school moneys that shall come into his hands, * * *"

That part which provides that the county treasurer shall give bond in the probable amount of school moneys that shall come into his hands, might be said to indicate an intention on the part of the General Assembly to require bond in the probable total amount of all funds which pass through the county treasurer's hands during the term. We think not. If this construction were given it would result in a bond of an excessive and unreasonable amount. Such a surety bond would not only be impracticable but would result in adding expense to the county common school fund to which the expense of surety bonds is chargeable.

This interpretation would mean that a county treasurer would be required to give bond in the amount which would correspond to the total of all funds passing through his hands during the entire term. This would be unjust and unreasonable in that the county treasurer would probably never have more than a fraction of the total in his custody at any one time during the term. Such interpretation is not viewed favorably by the courts, as was said in *St. Louis County v. Marvin Planing Mill Co.*, 58 S. W. (2d) 769, at page 770:

"* * * Nor should we give the statute such construction as would make it unreasonable and absurd, for it is to be presumed that such was not the legislative intent.' In the same case the court quoted with approval from *Thompson v. State*, 20 Ala. loc. cit. 62, wherein it was said that in construing a statute the court is often required 'to look less at the letter or words of the statute than at the context, the subject-matter, the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law giver.'"

And also in the case of *Chrisman v. Terminal R. Ass'n of St. Louis*, 157 S. W. (2d) 230, p. 234:

"* * * Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. * * *"

On the other hand it is possible to give this statute a more just and reasonable interpretation. The rule set out in the case of State v. Ball, 171 S. W. (2d) 787, at page 793; is as follows:

"Another rule applicable in construing statutes is that they should not be so construed as to lead to absurd results if they are susceptible of reasonable interpretation. State v. Irvine, 335 Mo. 261, 72 S. W. 2d 96, 93 A.L.R. 232."

The county treasurer should be required to give bond in the amount of the highest probable amount of moneys in his custody at any one time during the term, rather than in the amount of the total of all funds that pass through his hands during the term.

This interpretation will result in a surety bond which will serve the purpose of the statute as intended by the General Assembly and, at the same time, will be reasonable and practicable with regard to the county treasurer.

"* * * Laws are passed in a spirit of justice and for the public welfare and should be so interpreted if possible as to further those ends and avoid giving them an unreasonable effect. Gist v. Raekliffe-Gibson Constr. Co., 224 Mo. 369, 384, 123 S. W. 921. * * *"

--Bowers v. Missouri Mut. Ass'n.,
62 S. W. (2d) 1058, p. 1063.

Further, the probable amount should be computed with regard to funds obtained from any and all sources from which school funds are received in custody by the county treasurer. This is expressly provided in Section 10400, supra, where it is stated that "the county treasurer in each county shall be the

custodian of all moneys for school purposes belonging to the different districts * * "

Conclusion

Therefore, it is the opinion of this department that a county treasurer should be required to give a surety bond, under Section 10400 (House Bill 494 of the 63rd General Assembly), in the amount of the highest probable amount of school funds in his custody at any one time during the term, and further, that the amount of said bonds should be computed with regard to all school funds, irrespective of the source, received in custody by the county treasurer.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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