

BONDS:
COUNTIES:
COUNTY TREASURERS:

County Court of Cedar County required to pay premium on surety bonds executed by the county treasurer and may not cancel said bonds unless the bonds contain a cancellation clause or for cause.

February 26, 1951

Honorable Joe Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri



Dear Sir:

On February 5, 1951, this department rendered an official opinion to you on several questions relating to the validity and payment of premiums on the surety bond for your newly elected county treasurer. This is to inform you that since rendering that opinion and upon reviewing same, we consider it necessary to amend our former opinion. So, will you kindly consider this the official opinion to your request since we have withdrawn our opinion dated February 5, 1951. Your request reads as follows:

"A new County Court was elected in Cedar County, which is a County of the 4th class, at the last November election. The Treasurer who was also elected gave a surety bond under Section 10400 of Laws of 1945 page 1708 Section 1 and a bond under Section 13,795 Laws of 1937 page 424 and Laws of 1945 page 1968 Section 1. These bonds were approved by the old county court before January 1, 1951. The new County Court want to know if they have a right to consider the bonds and approve or disapprove them and they wish to know whether or not the approval of the bonds by the old County Court is valid.

"They also want to know if the County is obligated to pay the premium on these bonds for the 4 year term of office of the Treasurer, if they as a new court disapprove the Surety bonds which were approved by the old court."

A county treasurer and a new county court were elected in Cedar County in November, 1950. Said county does not have township organization.

Honorable Joe Collins

Apparently the newly elected county treasurer secured surety bonds as required under Sections 54.160 and 54.070, RSMo 1949, and submitted said bonds to the old county court holding office in 1950 for its approval. This all transpired prior to the newly elected county court's induction into office.

Under Section 54.070, the county treasurer is required to enter into a surety bond 10 days after his election, and reads:

"The person elected or appointed county treasurer under the provisions of this chapter, shall, within ten days after his election or appointment as such, enter into a surety bond or bonds with a surety company or surety companies, authorized to do business in Missouri, to the county in a sum not less than twenty thousand dollars nor more than the highest amount of money held by the treasurer at any one time during the year prior to his election or appointment, to be fixed and approved by the county court, conditioned for the faithful performance of the duties of his office, and the cost of said bond shall be paid out of the general revenue fund of the county; provided, that the county treasurer in any county of the third class or fourth class may furnish either a personal bond or a surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

Section 54.160, supra, does not require said elected county treasurer to enter into a surety bond within 10 days after elected, but before entering upon the duties of his office, and reads:

"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 by order of the board of directors or to the treasurer of some town, city or consolidated school district, as authorized by law, except in counties having adopted the township organization law, in which counties the township trustee shall be the custodian of all school moneys belonging to the township, and

Honorable Joe Collins

be subject to corresponding duties as the county treasurer; and said treasurer shall pay all orders heretofore legally drawn on township clerks, and not paid by such township clerks, out of the proper funds belonging to the various districts; 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, payable to the state of Missouri, to be approved by the county court, and paid for by the county court out of the county common school funds, conditioned for the faithful disbursement, according to law, of all such moneys as shall from time to time come into his hands; and on the forfeiture of such bond it shall be the duty of the county clerk to collect the same for the use of the schools in the various districts. If such county clerk shall neglect or refuse to prosecute, then any freeholder may cause prosecution to be instituted. It shall be the duty of the county court in no case to permit the county treasurer to have in his possession, at any one time, an amount of school moneys over the amount of the security available in the bond; provided that the county treasurer in any county of the third class or fourth class may furnish either a personal or surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

In either case, before said county treasurer assumes the duties of his office, he must either execute surety bonds as provided hereinabove or in counties of the third and fourth class, the county treasurer may execute personal bonds unless the county court requests the treasurer to furnish surety bonds. Cedar County being a county of the fourth class, in this instance the county treasurer could have executed personal bonds in the absence of such a request of the county court to furnish surety bonds.

One of the primary rules of construction of statutes is to ascertain the lawmakers' intent from words used, if possible, and to put upon the language of the Legislature honestly and faithfully its plain and rational meaning and to promote its object. Union Electric Co. v. Morris, 222 S.W. (2d) 767, 359

Honorable Joe Collins

Mo. 564. In State ex rel. Jefferson Co. v. Sheible, 163 S.W. (2d) 559, the court held that generally a bond should be construed to carry into operation the reasonable intention of the parties.

This department has heretofore ruled that the only way for a county court to pay the premium on surety bonds required of a county treasurer is for the county court to first order him to secure said surety bonds in lieu of personal bonds, and if the county treasurer furnishes surety bonds without the county court requiring them, said county treasurer will be required to pay the premiums thereon. (See copies of opinions rendered by this department on March 8, 1947, and March 27, 1947, to Honorable William E. Shirley and Honorable W. C. Frank, Prosecuting Attorneys of Adair County, respectively, previously attached for your perusal.) So, for the purpose of this opinion, we are assuming the county court did request said county treasurer to furnish surety bonds.

In view of the fact the county treasurer must secure surety bonds under one statute 10 days after his election in November, and under the other statute he is required to do so before he enters upon the duties of his office, he would necessarily have to do this prior to the newly elected county court's assuming office. So, this would require approval of the then county court and not the newly elected one.

Ordinarily surety bonds for the faithful performance of duty, etc., cover the term of office of the appointed or elected official. However, the bond by its very terms may specify a different period, and if this be the case, then whatever time is specified in said bond as to its duration is controlling. (See 11 C.J.S., Section 55d, pages 431, 432.) However, this no longer applies to county officers for the reason that Section 26(a), Article VI of the Constitution of Missouri, 1945, prohibits a county from becoming indebted in an amount exceeding in any year the income and revenue provided for such year. We are enclosing a copy of an opinion rendered by this department under date of January 12, 1948, to Honorable Ralph Baird, Prosecuting Attorney of Jasper County, Missouri, which holds that a county court is prohibited under Section 26(a), Article VI of the Constitution from becoming indebted in any year in an amount in excess of the income and revenue provided for such year and that a contract between the county and the surety company for payment over a four-year term of premiums on a county treasurer's bond does not bind the county for more than one year.

Honorable Joe Collins

Therefore, in view of the foregoing statutes and constitutional provision, the county court cannot enter into a contract with said surety company for a period to exceed one year; however, said court will be required to pay the premium on said bond for the first year, assuming that the old county court requested the newly elected county treasurer to furnish a surety bond.

CONCLUSION

It is the opinion of this department that the county court cannot pay the premium on said surety bonds executed by the county treasurer unless the then county court requested the newly elected county treasurer to furnish surety bonds in lieu of personal bonds. If such a request was made, then the county is liable for the premium on said bonds only for one year, notwithstanding the then Cedar County Court approved said bonds.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

ARH:VLM

Enc.