

COUNTY: Cedar County is liable for the
COUNTY COURT: payment of the premiums on the
COUNTY COLLECTOR: surety bond of the County
SURETY BOND OF COUNTY COLLECTOR: Collector of that county for
LIABILITY FOR PREMIUMS: the year of 1956.

April 16, 1956

FILED

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Honorable Joe W. Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Mr. Collins:

We acknowledge receipt of your opinion request of April 5, 1956, in which you ask the following:

"Enclosed find certified copy of Court Order made by our County Court on February 4, 1955.

"All county officers who are required to give a bond, including the County Collector, have given Surety Bonds, in compliance with the order, and the County Court has paid the premiums on all the bonds for 1955.

"The Court has also paid the premiums on all of the county officers' surety bonds for 1956 except the Collector's. Our County Court has refused payment of the premium on the Surety Bond of the County Collector for the year 1956. The County Collector budgeted for the premium on his bond in his budget for 1956.

"I would like to know if the County Court may lawfully discriminate against the County Collector. As they have paid the premiums on all other surety bonds, would they not also be compelled to pay the premium on the bond of the County Collector."

Having both the opinion request of March 21, 1956, which has been withdrawn by you as of recent date, and the one in question, the facts are sufficiently clear. Under the withdrawn opinion request, this office could not determine

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definitely whether or not the bonds in question had been consented to by the county court. Under the opinion request with which we are now concerned (April 5, 1956), there is no approval by the county court of the county collector's bond. However, such approval is found in the certified copy of the court's order attached to the withdrawn opinion request of March 21, 1956. Thus, the facts of both opinion requests will be used to render an opinion upon the opinion request of April 5, 1956.

Section 52.020, Cum. Supp. 1955, requires the county collector to give bond. It reads in part as follows:

"Collector--bond--deposits of collections.-- Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent of said amount; provided, however, that no collector shall be required to give bond in excess of the sum of seven hundred and fifty thousand dollars, conditioned that he will faithfully and punctually collect and pay over all state, county and other revenue for the four years next ensuing the first day of March, thereafter, and that he will in all things faithfully perform all the duties of the office of collector according to law. * *"

The certified copy of the court's order of December 20, 1954 approving the surety bond of the county collector meets the requirements of the above quoted section.

Now, see Section 107.070, RSMo 1949, which reads as follows:

"Surety Bond, officers may give, when-- cost, how paid.--Whenever any officer of this state or of any department, board, bureau or commission of this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any county or this state, or any deputy, appointee, agent or employee of any such officer, or any officer of

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any incorporated city, town, or village in this state, or any deputy, appointee, agent or employee of any such officer; or any officer of any department, bureau or commission of any county, city, town or village, or any deputy, appointee, agent or employee of any such officer; or any officer of any district, or other subdivision of any county, or any incorporated city, town or village, of this state, or any deputy, appointee, agent or employee of any such officer, shall be required by law of this state, or by charter, ordinance or resolution, or by any order of any court in 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 state, department, board, bureau, commission, official county, city, town, village, or other political subdivision, to enter into a surety bond, or bonds, with a surety company or surety companies, 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." (Emphasis ours.)

Under the latter section, it has been held that the county cannot be held liable for the premiums on a county collector's bond unless the consent and approval thereto of the county court be of record. *Boatright v. Saline County*, 169 S.W. 2d 371, 350 Mo. 945.

It appears that the Cedar County court, through its record, has both approved and consented to the county collector's bond, and that the county is thereby liable thereon under Section 107.070, supra. The certified copies of the court's order of February 4, 1955 and 1956 show that the court on those dates, has, through its order, "Now on this day the Cedar County Court after due consideration has requested that all County officials who are required to give Bond to give a Surety Bond," "consented and approved" within the meaning of Section 107.070, supra, to the collector's entry into the surety bond.

In the case of *Berry v. Linn County*, 195 S.W. 2d 502, the court said at l.c. 503:

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"The intent of Section 3238 is clear. It provides when an officer chooses to give a surety company bond, the cost of it shall not be imposed on the county unless the county agrees.

"A county court speaks only through its records. The only record we have here is the formal approval of the bond itself required by other statutes. There is no record showing the necessary authorization for Berry to give a surety company bond. Without such record the county may not be charged for the cost. Boatright v. Saline County, 350 Mo. 945, 169 S.W. 2d 371."

From the plain wording of the statute, Section 107.070, supra, and the cases which have been cited, it appears that the county is liable for the premiums on the bonds where, as in this case, the bond was entered into by the officer through the record consent and approval of the county court.

CONCLUSION

It is, therefore, the opinion of this office that Cedar County is liable for the payment of the premiums on the surety bond of the County Collector of that county for the year of 1956.

Very truly yours,

John M. Dalton
Attorney General

HLH:hw