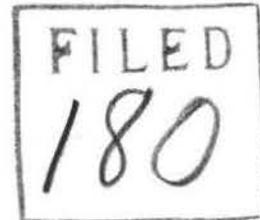


Opinion No. 180 Ans. by Letter
(Nessenfeld)

June 8, 1964



Honorable William G. Johnson
Prosecuting Attorney, Morgan County
Heineman Building
Versailles, Missouri

Dear Mr. Johnson:

This is in answer to your request for the opinion of this office with respect to certain questions which have arisen in your county in connection with the deposit of county funds.

You ask whether the county court has the sole power to designate the depositaries and the amounts to be deposited in each if there are more than one. In our opinion, based upon a review of Sections 110.130, et seq., RSMo, the county court is vested with the sole power to designate county depositaries and to determine the amounts to be deposited in each such depositary if there are more than one.

Putting to a side the provisions of Section 110.030, RSMo, it is to be noted that Section 110.130, RSMo, provides for the county court to receive proposals from banks which desire to be selected as depositaries of the county funds.

Section 110.140, RSMo, prescribes the procedure for bidders to follow, including the delivery of the proposal to the clerk of the county court.

Section 110.150 provides for opening the bids by the county court.

Section 110.170 provides that "As soon as the required security is given and approved, the court shall make an order designating the successful bidders as depositaries."

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Section 110.180 provides that if there are no proposals from banks in the county, "the county court may deposit the funds of the county" with one or more banks in the county or adjoining counties in sums and for the period of time the court deems desirable.

Section 110.190, RSMo, provides that when the funds are deposited with two or more banks under the provisions of Section 110.180, the county court shall select one of such banks to act as a clearing house for the others.

Section 110.200, RSMo, provides that if the total bids do not include the whole of the county funds, the county court may follow the procedure therein prescribed.

Section 110.210, RSMo, provides that if no selection of a depository is made at the time affixed by the applicable statutes, the county court may at a subsequent time select a depository or depositories.

Section 110.250, RSMo, provides that if the county court deems it necessary, it may require a depository to provide additional security and in the event of a failure to do so, "the county court may proceed to select another depository in lieu thereof."

The foregoing provisions, which of course are not set forth or even summarized in their totality, can mean only that the county court is the sole authority which has the power to select depositories.

Section 110.030, RSMo, does not in any way affect the sole authority of the county court to select depositories. Its sole purpose is to eliminate the necessity for advertising for bids so long as it is unlawful for depository banks and trust companies to pay interest upon demand deposits. The latter portion of this section makes clear that the obligation to select the depository or depositories is still vested in the county court by providing that if it is unlawful for depository banks and trust companies to pay interest on demand deposits, "the award or awards of such funds shall be made in each case, without bids and without requiring the payment of any bonus or interest, by the authority or authorities which are by statute empowered to make the awards of such funds upon bids."

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The statutes above cited designate the county court as the authority empowered to make the awards of county funds upon bids, and such authority remains unimpaired by the fact that advertisements for bids and the taking of bids are presently suspended.

You further ask whether the safekeeping receipts for United States Government securities which have been deposited in disinterested banking institutions or safe depositaries as trustees to secure the deposit of public funds in the designated depositaries should be held by or subject to the control of the county court. You state that at present the depositaries have pledged the safekeeping receipts to the county treasurer and that when such securities are exchanged, increased, or decreased, it is done with the approval of the treasurer as pledgor, evidently without obtaining the approval of the county court.

Section 110.010, RSMo, to which you refer, requires that securities of the character prescribed by Section 30.270, RSMo, secure the funds which are deposited in the legal depositary. Paragraph 2 of that section gives an option to the depositary bank to deliver the securities themselves to the fiscal officer or the governing body of the depositor of the funds or to deposit such securities with a disinterested banking institution or safe depositary "as trustee satisfactory to both parties to the depositary agreement". Paragraph 3 of that section provides in part that the rights and duties of the parties to the depositary contract shall be the same as those of the state and the depositary banks respectively under Section 30.270.

As applied to deposits of county funds, the parties to the depositary agreement can only be the depositary bank on the one hand and the county, acting through the county court, on the other hand. This section does not specifically provide for a safekeeping receipt, as such, in the event the depositary bank exercises the option, as is customary, to deposit the securities with a disinterested bank as trustee. Obviously, there should be some form of receipt whereby the trustee bank or safe depositary assures to the county that the securities have in fact been deposited therewith.

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Paragraph 3 of Section 110.010 further provides that in the event the securities are deposited with the trustee then, if the municipal corporation "or other depositor of funds" notifies the trustee in writing that there has been a breach of the depositary contract and makes written demand on the trustee for the securities or any part thereof, it is the duty of the trustee to forthwith surrender "to the municipal corporation or other depositor of funds" a sufficient amount of the securities to protect the depositor from loss. The word "depositor" as used in this statute has reference, insofar as applicable to your question, to the county which is the owner of the funds on deposit and not to the official who deposits those funds as the statutory agent of the county. The word "depositor" is used in the same sense as the words "municipal corporation", particularly in view of the word "other", which emphasizes the fact that it is the public body or political subdivision which is the actual depositor of funds within the meaning of the statute.

It is to be noted that Section 110.260, RSMo, provides in part that the county treasurer shall not be responsible for any loss of the county funds through the negligence or failure of any depositary, and that aside from his own misconduct or misappropriation of the funds, the selection of a depositary and the deposit of the funds therein has the effect of releasing the treasurer from loss thereof. This section further emphasizes the fact that the county treasurer has no control over the depositary or the securities given by such depositary to secure the deposit of funds therein.

Moreover, Section 110.250, RSMo, above noted, specifically empowers the county court when it deems it necessary for the protection of the county to require any depositary to provide additional security. Again, the county treasurer has no function to perform in this connection.

It is our opinion, upon a reading of the statutes as a whole, that the securities and, when deposited with the trustee, the safekeeping receipts therefor, are subject to the sole control of the county court as the agent of the county and not to the control of the county treasurer. Hence, in the event it becomes necessary to exchange, increase, or decrease the amount

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of the securities pledged, this may be done only with the approval of the county court rather than the county treasurer. In the event of a breach of the depository agreement, the notice provided for in Section 110.010 is to be given by the county, acting through the authority of the county court, and the surrender of the securities provided for therein may be made only to the county rather than to the county treasurer.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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