



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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JOHN C. DANFORTH  
ATTORNEY GENERAL

OPINION LETTER NO. 171

Honorable Theodore L. Johnson III  
County Counselor  
Greene County Courthouse  
Springfield, Missouri 65802

Dear Mr. Johnson:

This is in response to your request for an opinion from this office as follows:

"Does the Greene County Court or the Greene County Planning and Zoning Commission have the power by virtue of Section 229.320 Revised Statutes of Missouri to require (in the exercise of its discretion) cash bonds instead of surety bonds for the performance of the work outlined in Chapter 229.300 et sequence?"

"Does the Greene County Court or the Greene County Planning and Zoning Commission have the authority to place cash bonds paid to Greene County as performance bonds in interest bearing accounts?"

"The Greene County Planning and Zoning Commission in carrying out its functions under Section 229.300 et sequence for building permits can require either a cash bond or surety bond. In the past work has been performed which is unsatisfactory. Thereafter the Greene County Planning and Zoning Commission has sought to move against a surety bond provided by the individual contractor. As a result the problem is complicated by dealing with bonding companies as to the type of work,

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how long it has been since the work was performed, and extent of damages. Therefore, due to the red tape required in dealing with surety bonds, Greene County is contemplating the use of only cash bonds.

"In addition (and assuming only cash bonds were given) Greene County would be desirous of placing this cash into an interest bearing account so as to derive the income therefrom."

Greene County is a county of the first class and the statutory provisions of Sections 229.300 to and including 229.370, RSMo, apply. They deal with the right of a person, firm, or corporation concerning the excavation, erection, and removal of poles, pole lines, wires, conductors, sewers, and other matters and the right to move buildings or certain vehicles across and upon any street or highway outside the city limits of any municipality in the county without first having obtained a written permit from the county highway engineer and surveyor. Section 229.320, RSMo, to which you refer, provides as follows:

"1. The county highway engineer shall have authority to require any changes in the route, or to prescribe the time, method, and manner of such moving, or the use of such street, avenue, boulevard, road, alley, public easement, or highway, or any right-of-way or appurtenances thereto, and for good cause shown, when it is necessary to protect the right-of-way of, or, any such street, avenue, boulevard, road, alley, public easement, or highway, or the safety of the public, may refuse such application.

"2. The county highway engineer may require any and all such applicants to furnish and post such cash or bond as may be necessary for the protection of the public ways herein described; and appurtenances thereof, as he may deem proper under the circumstances. It shall be a condition of such bond that the applicant will refill such excavation or restore, repair or replace any such street, avenue, boulevard, road, alley, public easement, or highway, or any part of the right-of-way thereof, disturbed or affected, so that the same will be in as good condition as before the same was used for

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such purpose, and will keep and maintain the portion thereof so affected in such condition for a period of six months from the completion of such work or use, and will save such county harmless from any cost or expense occasioned or required by such work or use, for such period of time." (Emphasis added)

Section 229.330 provides as follows:

"1. If the use, excavation or encroachment of such street, avenue, boulevard, road, alley, public easement, or highway is of such nature to cause or result in disturbance or change, and the applicant fails or refuses to restore and replace such in substantially the same condition as before such use, excavation or encroachment, within thirty days after the completion of such use, excavation or encroachment, or such longer period as may be provided in writing by the county highway engineer and surveyor, such office shall give written notice to the applicant to refill, replace and restore such street, avenue, boulevard, road, alley, public easement, or highway in as good condition as it was at the time of such use, excavation or encroachment was commenced, and to keep and maintain the portion of such so affected in such condition for a period of six months from the date so fixed for the completion of such work, and to save the county harmless from any cost or expense occasioned or required in the refilling, repairing, restoring of such highway for such period, due to or occasioned by such use, excavation or encroachment.

"2. If the applicant fails or refuses to make proper restoration of said premises as required in such notice, within ten days after receipt of a registered letter containing such notice the highway engineer and surveyor may cause the necessary work to be done and charge the expense thereof to such applicant, deducting the amount therefor from the cash deposit made by such applicant or by an action on the bond, as the case may be." (Emphasis added)

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You inquire whether the county court of Greene County or the Greene County planning and zoning commission have the power by virtue of Section 229.320, RSMo, to require cash bonds instead of a surety bond for the performance of the work outlined in Section 229.300.

County courts are not the general agents of the counties for the state and their powers are limited and defined by law, and they have only such authority as is expressly granted them by statute or which is necessary to carry out and make effective the purposes of the authority expressly granted. King v. Maries County, 249 S.W. 418 (Mo. 1923). Under Section 229.320, RSMo, the county highway engineer is authorized to require an applicant for a permit to perform any of the work as specified in Section 229.300 to post a cash or written bond in such amount as he deems proper under the circumstances providing that the applicant will restore or repair any street or highway disturbed or affected as a result of his action; and under Section 229.330, RSMo, if any damage is done to the street or highway as a result of his action and he fails or refuses to make proper restoration of the premises after a notice from the county highway engineer, the county highway engineer may cause the necessary work to be done and charge the expense thereof to such person and deduct the amount therefor from the cash deposit. We believe this statute is clear that this authority is granted to the county highway engineer. We find no statute giving the county court or the county planning and zoning commission any jurisdiction or authority over this matter.

You also inquire whether the Greene County court or the Greene County planning and zoning commission have authority to place the cash deposited by the applicant as a performance bond in interest bearing accounts.

We find no statute giving the county court or county planning and zoning commission any jurisdiction over the cash deposited as surety as required by Section 229.320. It is our opinion that they have no such authority by any other statute.

We believe that a statutory provision requires the county highway engineer to determine the amount of cash to be posted by the applicant and to receive the cash as deposited and any balance due the applicant from the cash shall be returned to the applicant by the county highway engineer upon the fulfillment of the obligations paid by the applicant.

The question arises whether the county highway engineer is required by law to deposit the cash on hand in interest bearing obligations. Section 61.010, RSMo, provides that in all counties of

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class one in the state there is created the office of county highway engineer and surveyor to be known as the highway engineer who shall be elected for a term of four years. Section 61.040, RSMo, provides that every duly elected highway engineer shall take an oath of office and execute and deliver to the county court a surety bond in such sum as may be fixed by the county court for the faithful discharge of his duties of office. It is our view the county highway engineer is a public official and governed by the laws that apply to public officials. In regard to the duties and liabilities of a public officer receiving public money, it is stated in City of Fayette v. Silvey, 290 S.W. 1019, 1021 (K.C.Mo.App. 1926) as follows:

". . . The general rule, which is the rule in this state, is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession. Shelton v. State, 53 Ind. 331, 21 Am. Rep. 197; Thomssen v. County, 63 Neb. 777, 89 N. W. 389, 57 L.R.A. 303. He is therefore liable for losses which occur even without his fault. Shelton v. State, supra. This standard of liability is bottomed on public policy. University City v. Schall, 275 Mo. 667, 205 S. W. 631.

"In the last case cited, our Supreme Court, speaking through Blair, P. J., applied this general rule to a city treasurer, into whose hands the general funds of the city had passed, finding that the mayor and aldermen had directed the funds placed to the credit of the city treasurer in a certain trust company, which later failed. The treasurer died, and the suit was instituted against the administrator of his estate. The estate was held liable under the general bond, notwithstanding the fact that the funds had been so deposited in the trust company at the direction of the board of aldermen."

We find no statutory provision requiring the county highway engineer to deposit cash in his hand in any bank or interest bearing obligations.

In Snyder v. Cowan, 25 S.W. 382 (Mo. 1894), the clerk of the circuit court had in his hands certain funds which had been paid to him as damages due the plaintiff in the condemnation proceeding in

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the circuit court. The defendant loaned the money in his hands and received interest thereon in the amount of \$723.50. Plaintiff sought to recover from the clerk the above sum and was successful in maintaining his action therefor. In discussing whether the plaintiff was entitled to the interest received on this deposit, the court stated, l. c. 384, as follows:

". . . Then, when the money had been paid into court by it for plaintiff, and no exceptions had been filed by the railroad company to the report of the commissioners, the money thus paid in was his, and he had the right to demand and receive it from the clerk at any time that he chose. . . . To whom, then, did it belong? Not the railroad company, nor the clerk, but, as a matter of course, it belonged to the plaintiff, for whose use and benefit it was paid into court. . . . Defendant was under no obligation to place the funds deposited with him as clerk of the court upon interest. 'Had he locked them up in his chest, or merely deposited them in the bank for safe-keeping, and received no compensation for the use of them, he would not have been accountable for interest; but, having placed them where they drew interest, that interest must be considered as having the same ownership as the principal which produced the interest.' Bassett v. Kinney, supra. . . . As the principal sum was the plaintiff's, it follows that the interest earned by it is his also. . . ."

It is our opinion that the county highway engineer is not required to deposit the cash he receives in lieu of a surety bond under Section 229.320 in interest bearing accounts or obligations; but, if he does so, then the interest earned would have to returned and credited to the person making the deposit.

Yours very truly,



JOHN C. DANFORTH  
Attorney General