

COUNTY TREASURER

County court must order treasurer to secure surety bond before county is liable for premium.

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Honorable William E. Shirley
Prosecuting Attorney
Adair County
Kirksville, Missouri

Dear Sir:

We are in receipt of your request for our opinion as to whether a county court in a third or fourth class county is required to pay the premium for a surety bond obtained by a county treasurer when the county court has made no requirement as to the nature of the bond.

House Bill No. 493, now Section 13795, Mo. R.S.A. (page 16, 1946 Pocket Part, Vol. 25), is as follows:

"The person elected or appointed county treasurer under the provisions of this article, 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 (\$20,000.00) 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."

Since Adair County is a county of the third class, the last clause in the foregoing section is applicable to that county, and it would seem that it is necessary that the county court require a surety bond before being obliged to pay for the premium on such bond.

We believe that this question has been determined by the Supreme Court of Missouri in *Berry v. Linn County*, 195 S. W. (2d) 502. In that case Section 3238, R. S. Mo. 1939, was under discussion, and it provides that any county or municipal officer "may elect, with the consent and approval of the governing body of such * * * county, city * * * 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." That statute is very similar to the one under discussion, except that the consent of the county court is required in one, and the direction of the county court in the other.

In that case Berry was elected Treasurer of Linn County and furnished a surety bond, which was approved by the County Court, and Berry contended that the approval of the bond amounted to a consent of the court to pay the premium. The court found against Berry's contention, in the following language:

"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.

* * * * *

"In this case Berry has shown no agreement with the county court authorizing him to furnish surety company bonds. Therefore,

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the county is not authorized to pay the cost of the bonds and Berry should not recover."

In the present case there is no mention of an order of the county court "requiring" a surety bond by the treasurer elect, and following the decision in the Berry case, supra, it is our conclusion that the county court is not liable for the premium on a surety bond furnished by the county treasurer in a county of the third class, unless such bond is required by the county court, or unless the court agrees in advance to pay such premium.

Section 10400, No. R.S.A. (House Bill No. 494), is identical with House Bill No. 493, supra, in so far as it relates to counties of the third and fourth classes, concerning the bond to be given by the county treasurer for school moneys, and the above conclusion applies to House Bill No. 494.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RLH:HR