

COUNTY DEPOSITORIES:

Contract made by County Court with County Depository, which has duly qualified, prior to Laws of Mo., 1927, page 502, binding and legal until expiration.

February 2, 1939



Honorable Richard C. Ashby  
Prosecuting Attorney  
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Chillicothe, Missouri

Dear Sir:

This Department is in receipt of your letter of some time ago, wherein you make the following inquiry:

"Where a County Depository has duly qualified according to the statutes, prior to the effective date of the 1937 amendment, and has entered into a contract with the county court, and the contract has been approved, and made effective for the period of the designation, and has also filed, as in the instant matter, a personal bond guaranteeing the payment of the deposit, and that bond has been approved by the county court, does this designation and contract and bond become invalid and of no effect after the effective date of the 1937 legislation? Or, is the contract binding and legal until date of expiration?"

With reference to the 1937 amendment, we assume you refer to Laws of Missouri, 1937, page 502, entitled "State Department of Finance," Section 1, "Deposits shall be secured," said section being as follows:

"Notwithstanding any provisions of law of this state or of any political subdivision thereof, the public funds of every county, township, city, town, village, school district of every character, road district, drainage or levee district, state hospital, Missouri State School, Missouri School for the Deaf, Missouri School for the Blind, Missouri Training School for Boys, Industrial Home for Girls, Confederate Soldiers' Home, Federal Soldiers' Home, Missouri State Sanatorium, earnings of Missouri Penitentiary, State University, Missouri State Teachers' Colleges, Lincoln University, which shall now or hereafter be deposited in any banking institution acting as a legal depository of such funds under the provisions of the Statutes of Missouri requiring the letting and deposit of the same and the furnishing of security therefor, shall be secured by the said legal depository making deposit, as hereinafter provided, of securities of the same character as are required by Section 11469 and all amendments thereto for the security of funds deposited by the State Treasurer under the provisions of Article 1 and 2 of Chapter 72 of the Revised Statutes of Missouri 1929, and all amendments thereto. The said securities shall, at the option of the depository banking institution, be delivered either to the fiscal officer or the governing body of the municipal corporation or other depositor of said funds, or by depositing such securities with such disinterested banking insti-

tution or safe depository as trustee as may be satisfactory to both parties to the depository agreement. The rights and duties of the several parties to the depository contract shall be the same as those of the state and the depository banking institution respectively under Section 11469 of Article 2 of Chapter 72 of the Revised Statutes of Missouri 1929 and all amendments thereto, provided, however, that in the event a depository banking institution should deposit the bonds or securities with a trustee as above provided, and the municipal corporation or other depositor of funds shall give notice in writing to the trustee that there has been a breach of the depository contract and shall make demand in writing on the trustee for the securities, or any part thereof, then the trustee shall forthwith, surrender to the municipal corporation or other depositor of funds a sufficient amount of such securities as may fully protect the depositor from loss and the trustee shall thereby be discharged of all further responsibility in respect to the securities so surrendered."

Evidently the question arises as to the deposit of county funds under Section 12184, R. S. Mo. 1929, said section being as follows:

"It shall be the duty of the county court of each county in this state, at the May term thereof, in the year 1909, and every two years thereafter, to receive proposals from banking corporations, associations or individual bankers in such county as may desire to be selected as the depositories of the funds of said county. For the purpose of letting such funds such county court shall, by order of

record, divide said funds into not less than two nor more than ten equal parts, and the bids herein provided for may be for one or more of such parts. Notice that such bids will be received shall be published by the clerk of said court twenty days before the commencement of said term in some newspaper published in said county, and if no newspaper be published therein, then such notice shall be published at the door of the courthouse of said county: Provided, that in counties operating under the township organization law of this state, township boards shall exercise the same powers and privileges with reference to township funds as are herein conferred upon county courts with reference to county funds at the same time and manner, except that township funds shall not be divided, but let as an entirety: Provided, also, that in all cases of the letting of township funds, three notices, posted in three public places by the township clerk, will be a sufficient notice of such letting."

The County Court having proceeded under Section 12184, supra, and rights having accrued under said section, the question in the final analysis is: Does the new Act abrogate or take precedence over said Section 12184?

The general rules with reference to abrogating rights which have accrued under statutes are contained in State ex rel. v. Hackman, 272 Mo. 600, l. c. 608, a portion of which is herewith quoted:

"Limited to this reason alone the conclusion would be justified that it was the purpose of the Legislature in the enactment of the repealing law

to obliterate or destroy the power of counties to issue bonds to provide funds for road purposes; and in the absence of a saving clause to have a like drastic effect upon this power when partly exercised under the statute repealed. No special saving clause was attached to the repealing act. Except by way of emphasis to give explicit application to general laws, such special saving clause was unnecessary. A repealing statute which construed alone would paralyze partly executed powers is, under our legislative system, so modified by Sections 8060 and 8062, Revised Statutes 1909, as to perpetuate such powers to the extent of authorizing the completion or consummation of the purpose sought to be affected under a former law. Section 8060 so far as applicable to the case at bar is as follows: 'nor shall any law repealing any former law, clause or provision be construed to abate, annul, or in any wise affect any proceedings had or commenced under or by virtue of the law so repealed; but the same shall be as effectual and be proceeded on to final judgment and termination, as if the repealing law had not passed, unless it be otherwise expressly provided.' This court in *Rogers v. Railroad Co.*, 35 Mo. 153, discussing a question as to the modifying effect of said section upon a repealing statute, said, in effect, that this provision (Section 8060) preserves the relator's right of action notwithstanding the repeal of the statute under which the right was given. The Legislature,

however, not satisfied with leaving the validity of acts done to implication, where the facts in regard to a repeal were as in the case at bar, enacted Section 8062, which provides that: 'The repeal of any statutory provision shall not affect any act done or right accrued or established in any proceedings, suit or prosecution, had or commenced in any civil case previous to the time when such repeal shall take effect; but every such act, right and proceeding shall remain as valid and effectual as if the provisions so repealed had remained in force.' These sections, construed together, so modify a repealing statute, as to not only render valid initiatory or preliminary acts in the exercise of a power conferred by a former statute, but authorize such subsequent acts as may be necessary to effect the purpose originally contemplated. This conclusion does not require us to travel over an untrodden field in this jurisdiction. In a mandamus proceeding against the county court of Vernon County in State ex rel. Stone v. County Court, 53 Mo. 128, the purpose of which was to compel the completion of action by a county court, which had been initiated under a statute then repealed, the Supreme Court construed and applied what are now Sections 8060 and 8062, and held that a repealing statute, although express in its terms and having no special saving clause attached, did not, on account of the modifying effect of said general saving sections, render nugatory preliminary acts done or prohibit further



action in the completion of same. The limitation of the operative effect of these sections to judicial transactions as contended for by respondent, is not in accord with their terms, nor with the evident purpose of their enactment. Their general nature authorizes the conclusion that they were intended to continue in force repealed laws until proceedings commenced thereunder, regardless of their nature, might be completed. This was the construction placed upon them in the cases cited, and we have been unable to reach a contrary conclusion."

In the recent cases of *Cleveland v. Laclede-Christy Clay Products Co.*, 113 S. W. (2d) 1065, and *State ex rel. to the Use of Bar Producers Gravel Company*, 111 S. W. (2d) 521, the rule is again enunciated to the effect that statutes must be construed to operate prospectively only, unless legislative intent to the contrary clearly appears.

#### Conclusion.

In reading the Act of 1937, we find no saving clause or any statement in any of the statutes to the effect that the new Act is to abrogate or affect rights which have already accrued and action which has already been taken by the County Court. Therefore, we conclude that the Act of 1937 is prospective in nature and that the present contract made by the County Court with the County Depository, which has duly qualified, is binding and legal until the expiration of the same.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT

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