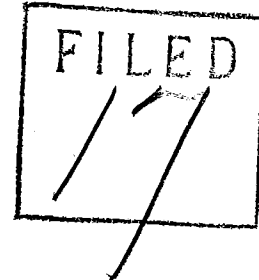


BONDS:
PUBLIC ADMINISTRATOR:
OFFICERS:

County Court not authorized to pay
premium on bond of Public Adminis-
trator.

April 10, 1941

Honorable James D. Clemens
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

This will acknowledge receipt of your letter
of March 6, 1941, which is as follows:

"The Public Administrator of Pike County
has obtained a surety bond covering his
official duties and has requested the
County Court to pay the premium of the
bond in the amount of \$40.00. The Court
has taken the position that section 3238,
R. S. Mo. 1939 does not authorize them to
pay the costs of such surety bond on the
theory that under the Public Administra-
tor's bond the county is not 'the public
body protected thereby.'

"Assuming that the County consents and
approves of the filing of the surety
bond by the Public Administrator, may
Pike County properly pay the premium on
the bond?"

Section 3238, R. S. Mo. 1939, provides as follows:

"Whenever any * * * * * officer of any
county of this state * * * * * shall be
required by law of this state * * * * *
to enter into any official bond, or other
bond, he may elect, with the consent and

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approval of the governing body of such
* * * * * county * * * * * 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." (Underscoring ours)

No one will doubt that the Public Administrator is an officer of the county. By Section 295, R. S. Mo. 1939, he is required to "enter into a bond to the State of Missouri in a sum not less than ten thousand dollars."

Thus, without question, the terms of Section 3238, supra, are broad enough to and do include a public administrator except in so far as the restriction on the right of the county court to pay for said bond limits the broad scope of the statute.

Under Section 295, R. S. Mo. 1939, a public administrator's bond is required to be conditioned "that he will faithfully discharge all the duties of his office" and is also to secure "the amount of property in his hands or under his control as such administrator."

In view of the condition of this bond it must be made to appear that it protects a "public body" before the county court is authorized to pay the premium thereon. This arises from the fact that under Section 3238, supra, only the "public body protected thereby" is authorized to pay the premium. Thus, if no "public body" is protected by such bond, then there is no source from which money may be derived to pay the premium.

Examination of Article 13 of Chapter 1, R. S. Mo. 1939, relating to Public Administrators, discloses that his only duties pertain to the preservation and administration of the estates of the class named in Section 299, R. S. Mo. 1939. He collects no funds of the county, draws no compensation from the county and does not have in his hands or under his control any property of the county. There is no maximum on fees he receives from the estates in his charge and he accounts

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to no one for the fees received. They are only paid to him upon order of the probate court as in cases of other administrators. Section 298, R. S. Mo. 1939.

From this resume it is apparent that the terms of his bond do not protect in any sense the funds of the county.

Section 3242, R. S. Mo. 1939, applies to throw further light on this question. This statute provides:

"Persons injured by the neglect or misfeasance of any officer may proceed against such principal or any one or more of his sureties, jointly or severally, in any proceeding authorized by law against such officer for official neglect or injury."

Subsequent statutes set up the procedure for any person injured to sue on official bond.

In a sense, the bond of a public administrator would protect the county. This is to be gleaned from the case of State v. Gomer, 101 S. W. (2d) 57, 68 (Mo. Sup.) In that case a county assessor was charged with having received payment for assessment lists which were not actually made. The suit was one to recover these fees. The bond in that instance was conditioned to secure the faithful performance of the duties of the office and it was provided by statute that in the event the assessor should fail to perform his duty, that is, make an assessment of the property, then a summary judgment could be entered on said bond for an amount sufficient to make the assessment. The court ruled that the sureties on the bond were not liable for the excess fees collected by the assessor, but as is to be seen, the bond did protect the county to the extent of what it cost to complete the duties the assessor failed to faithfully discharge.

Other authorities also recognize the right of a governmental body to sue on a faithful performance bond of one of its officers where any damage is sustained by the government. In Murfree's Official Bonds, Section 247, it is stated:

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"Although the state may maintain a civil action on a sheriff's official bond for official delinquency in criminal cases, yet unless some damage results from the breach of the bond the action cannot be sustained."

It is also stated in 46 C. J. p. 1070, Section 403, that:

"In the case the government performs work which the principal on an official bond has neglected to perform, the sureties are liable * * * * * for a reasonable compensation * * * * *."

Under this authority it appears that if a public administrator should fail to perform his duties properly, was thereupon removed from office by the county court and the county is put to some expense in straightening out his affairs, then in this sense the county is a public body protected by the bond given.

However, we do not think it was this type of protection that was contemplated by the Legislature when Section 3238 was enacted. There are two types of bonds given by officers of the counties in this state. One class is that conditioned to secure the faithful performance of the duties of the office and the other is conditioned to secure faithful performance of the duties and to pay over all funds of the county that may come into his hands. This latter type is that required of those officers who collect taxes and fees which must be accounted for, such as collector, treasurer, etc.

A study of the history surrounding the enactment of Section 3238, supra, leads us to believe that it was on this latter type of bond that the Legislature authorized the "public body protected thereby" to pay the premium. In an opinion to W. J. Melton, dated April 4, 1939, speaking of this statute, we said:

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"It is a matter of common knowledge that prior to the enactment of this statute many county officials gave personal bonds, the cost of surety bonds being almost prohibitive in view of the compensation received by such officers. However, the Legislature wishing to protect and safeguard public moneys in a safer and more secure fashion, provided that with the consent and approval of the governing body that surety bonds paid for by the public body protected could be given."

It is also a matter of legislative record and common knowledge that shortly prior to the passage of Section 3238, supra, (Laws 1937 page 190) the State Auditor under the terms of Section 13094, R. S. Mo. 1939 (Laws 1933 p. 416) had completed audits of the officers of the several counties, and found that several were in default on funds belonging to the county and further, it developed that their personal bonds were worthless. For this reason the funds were lost to the counties with no chance of recovery. It was this condition that prompted the Legislature to take steps to safeguard its funds.

We think this view leads to the conclusion that the intent of the Legislature in enacting Section 3238, supra, was to only authorize premium payments on bonds of officers that collect funds of the county or who must account for and pay over fees which they collect.

CONCLUSION.

Therefore, it is our opinion that the County Court is not authorized to pay the premium on the bond required of a public administrator.

APPROVED:

Respectfully submitted,

VANE C. THURLO
(Acting) Attorney General

LIB/rv

LAWRENCE L. BRADLEY
Assistant Attorney General