County Treasurer—Official Bond Of—Bond from Bank.

A County Treasurer is liable for the loss of public funds except when the loss is occasioned by the act of God or the public enemy, or where a statute has expressly provided that the funds shall be deposited in some bank.

Under Section 4367 as amended by Chapter 5, laws of 1903, the depositing of money in a bank is optional with the treasurer. If he does so deposit it and take a bond from the bank, it does not relieve him and his bondsmen from liability on the official bond.

Helena, Montana, Jan. 6th, 1906.

Hon. T. J. Porter, County Attorney, Miles City, Montana.

Dear Sir:—Your letter of the 29th ult., received, in which you ask for an opinion as to whether the County Treasurer's bond to the County would be liable for any loss by reason of the failure of a bank where the county treasurer had deposited money in such bank and taken a bond from the bank as required by Section 4367 of the Political Code as amended by Chapter 5, Laws of 1903.

Aa a general rule, public officials who have the handling of public funds are held to a strict accountability, and the only conditions upon which the treasurer and his bondsmen are not held liable for the loss of public moneys is where the loss is occasioned by the act of God, or the public enemy, or where the county treasurer has been required to deposit the money in some depository pursuant to an express provision of the law.

In the case of City of Livingston v. Woods, 20 Mont. 92, it was held that the treasurer and his bondsmen were not liable for the loss of money deposited in the Livingston National Bank, for the reason that the ordinance of the City of Livingston and also the general law, re-

quired the city treasurer to deposit all money in his name, as treasurer, in some bank, and that, so long as he used reasonable diligence and deposited the money in a bank of good standing and reputation, that he had exercised good business caution and prudence and was without fault or negligence, and, therefore, could not be held liable for the loss of such money by the failure of such bank. You will notice in the above case that the supreme court of this state has not followed the general rule as to strict accountability of public officers for the loss of public funds. However, their decision is based alomst wholly upon the case of U. S. v. Thomas cited therein, and that case was one in which the funds were lost through the act of the public enemy, so we do not believe that the case of the City of Livingston v. Woods can be held as modifying the general rule that a public officer in charge of the public money is responsible for the loss thereof except when occasioned by the act of God or the public enemy, or by an express statute which requires him to deposit it in some bank or other depository and thereby depriving him of the right of possession of the money.

Minnesota has a law practically the same as said section 4367 as amended, except that it contains this proviso, 'provided, however, that the taking of such security shall not be construed in any manner to release the said treasurer or his bondsmen for liability to the state for any money so deposited."

The supreme court of Minnesota in State v. Bobletor, 86 N. W. 461, construed this statute and also distinguished the case of the City of Livingston v. Woods, supra. This case enters into a very full discussion of the law as to the liability of the treasurer and his bondsmen where he has deposited the money in a bank and taken a bond from the bank, and, while their law contains the proviso quoted above, the reasoning of the court in that case, in our opinion, applies with equal force to our statute although no such express proviso is attached thereto. You will notice that Section 4367 as amended does not require the treasurer to deposit the money in any bank, but says that he must keep all moneys belonging to the county in his own possession until disbursed according to law, and sub-division 1 of Section 4350 of the Political Code provides: that the county treasurer must "safely keep the same.' Said Section 4367 as amended, while not requiring the treasurer to deposit the money in the bank, simply provides that in the event he does so deposit the money, that he must require from such bank or banks, a good and sufficient bond in double the amount of the deposit.

Now, if the money so deposited in the bank should be lost through the failure of the bank, it could not be urged by the treasurer and his bondsmen that the money was lost through the act of God or the public enemy, or because the control of the money had been wholly taken out of his hands by statute which required him to deposit the money in such bank, for neither one of these propositions would be true.

We are, therefore, of the opinion that the treasurer and his bondsmen are liable for the loss of money deposited by them in a bank from which they require a bond as provided by said Section 4367 as amended, and that the bond given by the bank to the treasurer is simply a bond to pro-

tect the treasurer and his bondsmen against any possible loss that might arise through the depcsiting of such moneys in said bank. The fact that tne board of county commissioners are given the power to approve of the bond given by the bank to the county treasurer does not have the effect oi substituting that bond for the official bond of the county treasurer, for it rests wholly with the county treasurer as to whether he will deposit money in the banks, but in the event that he does so deposit it, then the law provides that tne commissioners, who are the agents of the people of the county for the purpose of guarding the public funds, shall have tne right to exaimne and approve the sureties on the bond given by the bank to the treasurer.

As per your request, I herewith enclose you a copy of the opinion to the Hon. C. H. Brintnall, of date December 14, 1905, relating to the selection of trial jurors for the year.

very truly yours,

ALBERT J. GALEN,

Attorney General.