

County Moneys, Deposit of in Banks. Banks, Deposit of County Moneys in. County Commissioners, Duty of to Designate Banks for Deposit of County Money. Bond for Deposit. Amount of to Be Designated by County Commissioners.

The amount of bond required of a bank before deposit of county moneys therein is within the discretion of the board of county commissioners. The bond may be either a surety bond or personal bond within the discretion of the commissioners. The form of such bond must be the same as official bonds. In case of a personal bond, the sureties thereon must justify.

May 14th, 1913.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

I beg to acknowledge receipt of your letter of April 28, 1913, asking for an interpretation of certain provisions of Chapter 88 of the Session Laws of the Thirteenth Legislative Assembly, relating to the deposits of public moneys in banks by county treasurers.

As to the first question, that of the amount of the penalty of the bond to be given, the act in question places within the hands of the county commissioners (1) the designation of the banks in which funds are to be deposited; (2) the designation of the amount of the bond or security to be furnished by the bank with whom public funds are deposited. It is their duty to designate such security in public bonds or other securities as they shall deem fully sufficient to insure the prompt payment of all such deposits on demand. Their decision as to the amount of security to be given therefor is conclusive in the matter, and it is my opinion that it is within their discretion to fix the amount of the bond to be furnished by any bank in which county funds are deposited at twice the amount of the maximum amount designated by them to be kept in said bank.

The question also as to whether surety company bonds and personal bonds should be in equal amounts, is one which is within the discretion of the county commissioners, under the terms of this act.

As to the time for which bonds shall run and the form thereof, I refer to Secs. 388, 389 and 412 of the Revised Codes, which are as follows:

"Sec. 388. All official bonds must be in form joint and several and made payable to the State of Montana in such

penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

Sec. 389. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy or clerk.

"Sec. 412. The provisions of this article, as the same shall be in force after amendment by this act, shall apply to all official bonds, and to the bonds and undertakings of receivers, executors, administrators and guardians, and to bonds and undertakings given in injunction proceedings, and to all bonds and undertakings required by law to be given and approved by any court, judge, board, person or body, and, except as to requirements of such approval, the provisions shall apply to all bonds given or required by law to be given in attachment proceedings, criminal actions or proceedings, bail bonds, appeal bonds, and all bonds given or required to be given in any legal proceedings or action in any court of this state."

A compliance with these provisions would require that the bonds be made to the State of Montana as obligee, and to cover the full period during which the funds of the county are to be deposited with the bank giving the bond. Paragraph 2 of the act also provides that no deposit shall be made, or permitted to remain in any bank until the security for such deposits shall have been first approved by the board of county commissioners and delivered to the treasurer. Sec. 386, which is as follows:

"When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars thereof, making in the aggregate a liability of double the amount named as the penal sum of the bond. And if any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his co-sureties in proportion to the amount for which he is liable,"

Prescribes the requirements for personal bonds, and Secs. 385 and 412 of the Revised Codes would make it necessary that the sureties upon these bonds justify as in the case of other bonds.

Very truly yours,

D. M. KELLY,
Attorney General.