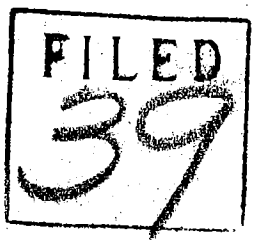
MOTOR VEHICLES:
DRIVER'S RESPONSIBILITY LAW:
COUNTIES:
BONDS:

County court may not deposit county funds as security for county employee to retain his driving license.

April 24, 1956



Honorable Rex A. Henson
Prosecuting Attorney
Butler County
Poplar Bluff, Missouri

Dear Mr. Henson:

This is in reply to your request for an official opinion of this office which quoted in part was as follows:

> "Since this employee was on business for the county and operating county equipment at the time of this collision and is financially unable to post the necessary bond to secure his right to drive, we would like your opinion as to whether or not the County Court, if they so desire, could post this bond for their employee with county funds pending a disposition of the question of liability between the driver of the county equipment and the parties who were involved in the collision with the county truck."

The quoting from Cassidy vs. City of St. Joseph, 247 Mo. 197 at l.c. 205-206:

> "Neither the State nor those quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to the acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute,

> or employees whose duties are imposed by officers and agents having general authority to do so. * * *"

It is therefore thought that in accordance with the above doctrine, there is no liability on the part of the county for the automobile accident described in your letter.

In regard to the power of the county court before the adoption of the Constitution of 1945, the Supreme Court in Lancaster vs. Atchison County, 180 S.W. 2d 706, l.c. 708 declared:

> "'The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' * * *"

The above limitations on the powers of county courts are further expressed in points 2 and 3 of the above mentioned case at l.c. 708:

> "(2,3) Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' * * *"

A search of the statutes including the county budget law chapter fails to reveal any law permitting county funds to be deposited as security for the payment of the liability of a county employee. In the event a lawsuit between the parties in the accident described should be resolved against the county employee, then, of course, the damages would come out of the principal of the bond posted.

Section 303.230, Cum. Supp. 1953, subsection 2 is as follows:

> "2. If such judgment, rendered against the principal on such bond, shall not be satisfied within sixty days after it has become

> final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond."

It is believed from the context of the above premises that the county is in no wise responsible for damages for the possible neglect of one of its employees, at least under the ordinary circumstances. It can readily be seen, therefore, that for the county court to enter into such a bond would be for the county to consent to such liability for the accident as surety. Article VI, Section 25 of the Constitution of 1945 is excerpted for the purposes of brevity here and may be read as follows:

> "No county, * * * shall be authorized to lend its credit * * * to any private individual, * * *."

Section 25, thereafter, prohibits authorization of a county to lend its credit to any private individual.

It is therefore believed that there is definite constitutional inhibition against the county court depositing money or giving a bond for an individual to the Safety Responsibility Unit of Missouri.

CONCLUSION

It is, therefore, the opinion of this office that a county court may not post bond of county funds as security for an employee of the county with the Driver's Responsibility Unit of the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF/bi