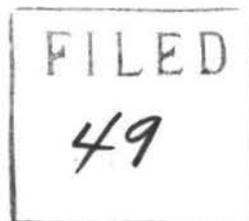


OFFICERS: Clerk of the Circuit Court liable on official bond for funds and property in his custody by virtue of his office.

October 24, 1949



Honorable Robert G. Kirkland
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this Department, reading as follows:

"Please furnish my office at your convenience an opinion on the following question:

"Who is liable for or has to repay, account for, or make up cash and/or office equipment, the personal property of and belonging to and stolen from the office of the Clerk of the Circuit Court in a third class county?"

Section 13285, R. S. Missouri, 1939, relates to the official bonds of clerks of the circuit courts. The conditions of such bonds are set forth in this section which reads in part as follows:

"* * * The bond shall be conditioned that he will faithfully perform the duties of his office, and pay over all moneys which may come to his hands by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, records, papers, seals, apparatus and furniture belonging to his office."

The terms of the statute are quite plain and unambiguous and unquestionably require the officers referred to therein to account for all moneys and property coming into the hands of such officers by virtue of their official position. We note that the element of attention to 46 C.J., "Officers," paragraph 314, page 1039, which reads as follows:

"According to the more general rule the liability of a public officer for public

funds and property in his custody is that of an insurer rather than that of an ordinary bailee, and he is liable for loss resulting from theft, robbery, fire, or the failure of the depository. * * *

This is the rule which is applied in Missouri as appears from State v. Moore, 74 Mo. 413, 41 Am. R. 322; State v. Powell, 67 Mo. 395, 29 Am. R. 512; Fayette v. Silvey, 290 S.W. 1019. It, therefore, appears the fact that public funds and property may be stolen from the clerk of the circuit court will not serve to relieve such officer of his duty to account for such funds and property.

Under similar circumstances, the Supreme Court of Missouri cited with approval the following rule in State ex rel. v. Powell, 67 Mo. 395, 29 Am. R. 512:

"* * * Public officers, however, are universally held to a more rigorous accountability than simple trustees for the public funds committed to their keeping; and though, in a general sense, they may be said to be bailees, still they are bailees who are subject to special obligations for the benefit of the public, and the degree of their responsibility is not to be determined by the ordinary law of bailment. In the United States v. Prescott, 3 How. 578, a leading case on this subject, it was pleaded to a suit on an official bond that the funds had been feloniously stolen, taken and carried away without any fault or negligence on the part of the officer, and the court, holding the plea insufficient, said: 'Public policy requires that every depository of the public money should be held to a strict accountability; not only that he should exercise the highest degree of vigilance, but that 'he should keep safely' the moneys which come to his hands. Any relaxation of this condition would open a door to frauds, which might be practical with impunity. * * *"

CONCLUSION

In the premises, we are of the opinion that the clerk of a circuit court in a county of the third class is liable upon his

Honorable Robert G. Kirkland

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official bond for all public funds and property coming into his hands or under his control by virtue of his official position, and that the fact that such public funds and property are stolen will not serve to relieve such officer from such liability.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WFB/feh