

COUNTY CLERKS--Guilty of misdemeanor in office for failure to  
file notary bonds with Secretary of State.

✓  
11742-11681-11687 R.S. Mo. 1929

August 3, 1933



Honorable Dwight Brown  
Secretary of State  
Jefferson City, Missouri

My Dear Mr. Brown:

Acknowledgement is herewith made of your inquiry  
for an opinion of this office, which request reads as follows:

"We have several county clerks who have  
not filed notary bonds with this office  
in accordance with Section 11742 of R.  
S. Mo. 1919. We have written them twice  
but received no reply. Please advise  
what further action we may take."

Section 11742, R. S. Mo. 1929 contains the follow-  
ing:

"Every notary, \* \* \* \* shall take the  
oath of office, \* \* \* \* shall give bond  
to the state in the sum of two thousand  
dollars, except in counties of more than  
one hundred thousand inhabitants, in  
which they shall give bond in the sum of  
five thousand dollars, with at least two  
good and sufficient sureties, \* \* \* \*  
which, \* \* \* \* bond shall be filed and  
recorded in the office of said county  
clerk and \* \* \* \* after having been so  
recorded, shall be filed in the office of  
the secretary of state, \* \* \* \*."

This Section plainly requires that these bonds be  
filed in your office. The only person entitled to the bond  
after it has been filed and recorded with the clerk of the  
county court, is such clerk, and while the Statute does not  
state in so many words that the county clerk should forward  
the same to your office, it is his duty to do so.

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Section 11681, R. S. Mo. 1929, contains the following:

"If any clerk shall knowingly and willfully do any act contrary to the duties of his office, or shall knowingly and willfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor in office."

As the duty to file the notary bond thus rests upon the county clerk, it would seem a breach of duty, or at least a misfeasance for him to fail to forward the bond to your office for filing.

Section 11682 provides the procedure when the county clerk has been guilty of a misdemeanor in office. A portion of said section reads as follows:

"When any court, or the judge or judges, or a majority of them in vacation, shall believe from their own knowledge or from the information of others, on oath or affirmation, that the clerk of the court in which they preside has been guilty of a misdemeanor in office, they shall give notice thereof to the attorney-general or prosecuting attorney, stating the charges against such clerk, and requiring him to prosecute the same; and they may suspend such clerk from office until a trial can be had, and appoint a temporary clerk, who shall possess the same qualifications, take the same oath and give like bond as other clerks, and who shall possess the same power, perform the same duties and receive the like fees as other clerks, and shall continue in office until the regular clerk shall resume his office or a successor shall be elected. \* \* \* \*"

It accordingly seems that it would be proper for the Secretary of State to present the matter to the county court of any county wherein the county clerk has failed to forward these bonds to your office for filing. It would, of course, be nec-

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essary that this information be transmitted to the county court on oath.

It is the desire of this office to cooperate with you in obtaining a full compliance with Section 11742, and if you so desire we shall be glad to correspond with any county clerk who has failed to comply with this Section, in and endeavour to get the matter adjusted without formal complaint being filed.

Respectfully submitted

HARRY G. WALTER, Jr.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General