LOSS BY THEFT OF STATE FUNDS BY AN OFFICER--- THE OFFICER AND HIS BONDSMEN ARE RESPONSIBLE FOR SAME.

May 23, 1933.

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Hon. Claud M. Shepherd
Secretary
Barbers' State Board of Examiners
517 Pickwick Building
Kansas City, Missouri

Dear Mr. Shepherd:

Regarding your letter of May 2nd, 1933, wherein you spoke of your office at 517 Pickwick Building being burglarized April 25, 1933, between the hours of 5 p. m. and 8 a. m., in which you state funds in the amount of $105.00 were stolen, $97.00 of which was for licenses, permits of examination, and apprentice permits, and $8.00 was for money left on deposit by the barbers. You state further that the burglary was reported to the Police Department of Kansas City and an investigation of same was made; that every precaution was taken to safeguard the State's money and that this was the first and only loss sustained during your four-years term. You spoke further as follows:

> "The money was kept in a metal strong box which was locked, and the key for same was in a locked drawer which was forced open. The outer office door was also locked. We banked our money on Saturday, the 22nd of April, and this money was an accumulation of Monday and Tuesday, April 24th and 25th. I was away, holding examinations in St. Joseph, Missouri, and my clerk, Mr. Lake in the Kansas City office, was unable to leave to deposit the money in the bank."

Replying to your communication relative to the above matter, will state that it was an exceedingly unfortunate affair and we are very sorry that same happened. We will call your attention to the law in the case.

Section 13523 R. S. 1929, provides,

> "A board of examiners, to consist of three persons, citizens of this state * * * * * * * * * * * * * * * Each member of said board shall, before entering upon the discharge of his duties, give a bond in

> the sum of fifteen thousand dollars, with a duly authorized surety or bonding company, to be approved and filed by the secretary of state, conditioned for the faithful performance of his duties, and shall take oath * * * * * * * * * * * * * * * * ."

Section 13525 R. S. 1929, after providing for a salary to the members, including traveling expenses etc., says,

> "Provided, however, that all moneys collected by the board or its treasurer shall be paid into the state treasury, there to constitute a fund for the purpose of carrying out the provisions of this chapter. * * * * * *."

Sections 13527 and 13528, R. S. 1929, provide for the fees to be charged and collected by the Board. This makes the members State officers and the handling of the money doubly important.

It has been ruled in cases of this type that while,

> "* * * the defendant was guilty of no want of care or prudence in failing to ascertain the true condition of said bank. (Where he kept his money on deposit) The question for determination is, whether, on the facts stated, the defendant, Powell, and the sureties on his bond, are liable for the sum so lost."

After reviewing the authorities in that case where the bank had failed, the court said:

> "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, * * * * * * 'Public policy requires that every depositary 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 practiced with impunity. * * * * * * * * * * * * * * * *

AND THAT THE FACT THAT THE MONEY WAS STOLEN FROM HIM, WITHOUT HIS FAULT, DOES NOT RELEASE HIM FROM HIS OBLIGATION TO MAKE SUCH PAYMENT."

State ex rel. Powell, 67 Mo. 395.

This is an old case but has been followed in a long line of decisions down to the present time.

City of Fayette v. Silvey, 290 S. W. 1019 l. c. 1021;
University City v. Schall, 275 Mo. 667;
Bragg City Special Road District v. Johnson, 323 Mo. 990.

In view of the law above quoted, although it is a very unfortunate affair, it is our opinion that you and your bondsmen would be answerable to the State for the money and would be compelled to pay same into the State Treasury, notwithstanding the unfortunate surroundings in the loss of same.

Very respectfully,

Geo. B. Strother

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Assistant Attorney-General.

APPROVED:

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