

CIRCUIT CLERKS WHO ARE EX-OFFICIO RECORDERS OF DEEDS - Bond required for each capacity - both offices to be assumed on first Monday in January.

12/16

December 8, 1934



Hon. Robert T. Wise,  
Clerk of the Circuit Court,  
County of Callaway,  
Fulton, Mo.

Dear Sir:

A request for an opinion has been received from you under date of November 30, 1934, such request being in the following terms:

"At the recent election I became the Circuit Clerk Ex-Officio Recorder of Callaway County, Missouri.

Up until this time the two offices have been carried on separately, being consolidated under the laws passed at the last session of Legislature.

Naturally a number of questions have arisen out of this consolidation of offices upon which our County Court and Prosecuting Attorney seem to hold conflicting views.

I should like to have your opinion as to whether or not I shall have to give two bonds.....one as Circuit Clerk and another as Recorder? I am of the opinion that one bond as Circuit Clerk Ex-Officio Recorder should be sufficient. Will you please let me have your opinion on the above matter; also stating as definitely as you can the probable amount of such a bond.

I should like also to know your opinion as to the exact date I shall take over this office... meaning the combined offices of Circuit Clerk and Recorder. It has always been the custom in this county for the Circuit Clerk to take office on the first Monday in January and the Recorder on the first day of January. It is my belief that I take over both offices as one officially on the first

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Monday in January, 1935, but I should like definite information on this subject.

I shall very much appreciate any assistance you may give me in these matters."

I

CIRCUIT CLERK WHO IS EX-OFFICIO RECORDER OF DEEDS MUST GIVE BOND IN EACH CAPACITY.

A Circuit Clerk who is Ex-Officio Recorder of Deeds under R. S. Missouri, 1929, Section 11523, as repealed and re-enacted by Laws of 1933, page 360, is required by R. S. Missouri, 1929, Section 11529, as repealed and re-enacted by Laws of 1933, page 360, to give a bond for the faithful performance of his duties as Recorder, such section requiring this bond being as follows:

"Every clerk, before entering upon the duties of his office as recorder, shall enter into bond to the state, in a sum not less than one thousand dollars (\$1000) nor more than five thousand dollars (\$5000) at the discretion of the county court, with sufficient sureties, to be approved by said court, conditioned for the faithful performance of the duties enjoined on him by law as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to his successor."

All Circuit Clerks are required to give bonds for the faithful performance of their duties as Circuit Clerks by R. S. Missouri, 1929, Section 11666, which is as follows:

"Every clerk, before he enters on the duties of his office, shall enter into bond, payable to the state of Missouri, with good and sufficient securities, who shall be residents of the county for which the clerk is appointed or elected, in any sum not less than five thousand dollars, the amount to be fixed and the bond to be approved by the court of which he is clerk, or by a majority of the judges of such court, in vacation. 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 hand 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."

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Under the two statutes above set out, where one person holds and performs the duties both of Circuit Clerk and Recorder of Deeds, the County or other interested parties have a right to protection of not less than \$5,000 in connection with the activities of the Circuit Clerk and not less than \$1,000 in connection with the functions of the Recorder. Although these two offices may be held by the same person, the duties are separate and distinct and the bonded indemnity for the proper performance of such duties should be likewise separate and distinct. By Section 11529 the Recorder's bond is to be approved by the County Court and the amount between \$1,000 and \$5,000 fixed in the discretion of that Court, while the Circuit Clerk's bond by Section 11666 is to be approved by the Circuit Court, or a majority of the judges thereof. The securities on the Circuit Clerk's bond must be residents of the County for which the Clerk is appointed or elected, while no such requirement is made for the Recorder's bond. The fact that these statutes are separate and the provisions of such statutes which have just been discussed, show us that a Circuit Clerk who is Ex-Officio Recorder of Deeds must furnish a bond for the faithful performance of his duties as Circuit Clerk, and another bond for the faithful performance of his duties as Recorder.

## II

### DATE OF TAKING OFFICE OF CIRCUIT CLERK WHO IS EX-OFFICIO RECORDER OF DEEDS.

This second question presented in your letter has already been ruled upon by this office in an opinion signed by Hon. Roy McKittrick as Attorney General, and Hon. Charles M. Howell, Jr. as Assistant Attorney General, addressed to Miss Veda F. Smith, Recorder of Deeds, Carrollton, Missouri, such opinion being dated June 16, 1934. In such opinion the following conclusion is stated:

"Section 11534, Laws 1933, page 361, provides that present recorders shall serve out their terms as separate officers. The change occurs on the first Monday in January or January 7, 1935, the date on which the newly elected circuit clerk takes office. (Sec. 11664 Revised Statutes of Missouri, 1929). Since the newly elected circuit clerk is the successor of the recorder, the recorder will hold over until that time."

In conclusion, it is our opinion (1) that a Circuit Clerk who is Ex-Officio Recorder of Deeds under R.S. Missouri, 1929, Section 11529, as amended by Laws of 1933, page 360, must give a bond for the faithful performance of his duties as Circuit Clerk, and another bond for the faithful performance of his duties as Recorder of Deeds, and (2) where the Recorder now in office is not the same person as Circuit Clerk, and his term of office under the law under which he was elected does not terminate until January 7, 1935, the

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newly elected Circuit Clerk who is Ex-Officio Recorder of Deeds does not assume the office of Recorder of Deeds until January 7, 1935, at which time he likewise assumes the office of Circuit Clerk under R. S. Missouri, 1929, Section 11664.

Very truly yours,

EDWARD H. MILLER  
Assistant Attorney-General

APPROVED:

Hoy McKittrick  
Attorney-General