

PUBLIC OFFICERS - Ex County Clerk is responsible to State of Mo. for loss of funds derived by sale of fishing and hunting licenses held by drug store proprietor when store was burglarized.

March 6, 1935.



Hon. Wilbur C. Buford, Commissioner,
Game and Fish Department,
Jefferson City, Missouri.

Attention: Mr. Montie Glover,
Chief Clerk.

Dear Sir:

This Department is in receipt of your letter of March 2 requesting an opinion based on the following facts:

"Mr. Fred Tanner, manager of Tanner's Drug Store, being an agent for selling hunting and fishing licenses for Ex-county Clerk C.A. Dirckx of Cole County, Mo. states that on the night of June 22nd, 1934 his store was robbed and that \$119.50 in money was stolen which he had received from the sale of hunting and fishing licenses.

Mr. C.A. Dirckx and Mr. Fred Tanner are asking to account for said money by an affidavit. The licenses representing this money, no doubt, were used by the parties to whom they were issued, and if accounted for by an affidavit, this department will receive no revenue for same."

The situation you outline in your letter has also been brought to the attention of this office by Mr. Dirckx and Mr. Tanner in person. It would appear to be one of those unfortunate circumstances for which no one is responsible, but destined to work a hardship on the parties involved.

It is well settled law that public officers entrusted with public money must keep such funds safely, being an insurer thereof liable for losses occurring even without their fault. In the case of City of Fayette v. Silvey, 290 S.W. 1019, a situation arose wherein the City Collector of Fayette, Mo. sustained a loss of city funds in the Farmers and Merchants Bank of Fayette.

The Court, holding the collector responsible for the funds, said (l.c. 1021):

"We cannot agree with defendants in this view. The general rule, which is the rule in this state, is that one of the duties of a public officer intrusted with public money is to keep such funds safely, and that duty must be performed at the peril of such officer. Thus, in effect, he is an insurer of public funds lawfully in his possession. *Shelton v. State*, 53 Ind. 331, 21 Am. Rep. 197; *Thomssen v. County*, 63 Neb. 777, 89 N.W. 389, 57 L.R.A. 303. He is therefore liable for losses which occur even without his fault. *Shelton v. State*, supra. This standard of liability is bottomed on public policy. *University City v. Schall*, 275 Mo. 667, 205 S.W. 631.

In the last case cited, our Supreme Court, speaking through Blair, P.J., applied this general rule to a city treasurer, into whose hands the general funds of the city had passed, finding that the mayor and aldermen had directed the funds placed to the credit of the city treasurer in a certain trust company, which later failed. The treasurer died, and the suit was instituted against the administrator of his estate. The estate was held liable under the general bond, notwithstanding the fact that the funds had been so deposited in the trust company at the direction of the board of aldermen.

We think the rule is equally applicable to the case at bar. In the cited case the officer involved was the city treasurer, and in the instant case the city collector. In both cases the officer was charged with the safekeeping of the city's funds. Defendants here argue that the funds involved were derived from the collection of water and light bills, and therefore do not come within the meaning of the rule that the collector is responsible for the safe-keeping of the funds, not being derived from the collection of taxes or from other sources contemplated by the ordinance fixing the

duties of the city collector. We think this position also without merit. It is not disputed that the bond herein is one conditioned generally for the faithful performance of duties required by law. The general rule in this respect is stated in paragraph 199, p. 522, 15 C.J., as follows:

'A bond conditioned generally for the performance of all the duties of the office required by law covers duties which the officer is required to perform ex officio, and the sureties are liable for a default in the performance thereof, even though the ex-officio duties were added after the bond was given.'

See State v. Adams, 172 Mo. 1, 72 S.W. 655; People v. Lyons, 168 Ill. App. 396, section 8451, R.S. 1919.

Frequently public officers are held as bailees, and again they are said to hold public funds as trustees, and to be clothed with the legal duties and liabilities attaching thereto. The weight of authority, however, seems to be that a public officer, unlike a trustee or agent, is not merely a bailee or custodian of the money in his hands; he is called on to account according to a much more rigorous standard of responsibility. State ex rel. v. Powell, 67 Mo. 395, 29 Am. Rep. 512."

The section relating to the authority of a county clerk in delegating agents for the collection of license fees for hunting licenses is Section 8263, R.S. Mo. 1929, which is as follows:

"It shall be lawful for the county clerks of the various counties and the license collector of the City of St. Louis to appoint agents within their respective counties and city who shall have the authority to issue licenses for the county clerk and the city collector. The county

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clerks and the license collector of the City of St. Louis shall be held responsible and liable for the acts of their agents. Said agents shall have such authority solely at the pleasure of the county clerk or the said license collector. Said agents shall make a report and an accounting on the last day of every month, shall be subject to a final accounting and shall be amenable to the same laws referring to the issuance of licenses as are the county clerks and the license collector of the city of St. Louis. Game and fish licenses shall not be sold for more than the values set out in the statutes. Violation of this section shall be deemed a misdemeanor."

CONCLUSION

In view of the above statute and the pointed decision hereinabove quoted, it is the opinion of this department that Mr. Dierckx as ex-county clerk is responsible to the State of Missouri for the \$119.50 which was lost in the burglary of Mr. Tanner's Drug Store, regardless of the fact that the same was unavoidable and was not in any wise due to any carelessness, dishonesty or misappropriation of funds on the part of Mr. Dierckx.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General

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