

DEPUTY CIRCUIT CLERK: Statutes do not require a deputy to give bond; however, circuit clerk may, if he desires, exact a reasonable bond.

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January 26, 1935.



Hon. John E. Short,  
Circuit Clerk,  
Ray County,  
Richmond, Missouri.

Dear Sir:

This department is in receipt of your letter of some time ago wherein you request an opinion concerning the following:

"I having asked my deputies to furnish bond at \$1,000 each, would like a decision from your office on this matter."

Section 11812, Laws of Missouri, 1933, p. 371 contains the following provisions relating to deputies:

"Every clerk of a circuit court shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the county court, as such court shall deem necessary for the prompt and proper discharge of the duties of his office. The County Court, in its order permitting the clerk to appoint a deputy or assistant, shall fix the compensation of such deputy or assistant, which, in counties having 12,500 persons and less, shall not exceed the amount allowed deputy or assistant to the county clerk for the actual time employed and shall designate the period of time such deputy or assistants may be employed. Every such order shall be entered of record, and a certified copy thereof shall be

filed in the office of the county clerk. The clerk of the circuit court may at any time, discharge any deputy or assistant, and may regulate the time of his or her employment, and the county court may, at any time, modify or rescind its order permitting any appointment to be made, and may reduce the compensation theretofore fixed by it."

Section 11666, R.S. Mo. 1929 relates to the giving of a bond by the circuit clerk, and 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."

Neither of the above sections contain any provision relative to the giving of bond by a deputy circuit clerk; we therefore conclude that it is not necessary for a deputy to give bond for his official acts in the circuit clerk's office. It is a well recognized principle of law that you, as circuit clerk, would be liable on your bond for the acts of the deputy. We assume that you had this in mind when you conceived the idea of having your deputy execute a bond--that the same is for your own protection. Some states require a deputy to give bond, but as above stated, the State of Missouri does not.

We call your attention to a decision in the State of Indiana, where such a law exists, for the purpose of shedding light on whether or not it is legal for you to exact a bond from your

deputy. In that case, *Southern Surety Co. v. Kinney*, 74 Ind. App. 1.c. 216-217, the Court said:

"Thus far we have considered Sec. 9478 Burns 1914, *supra*, as being merely permissive rather than mandatory, but the language used does not necessarily require that it be so construed. Said section provides that a county treasurer 'may appoint one or more deputies and may take from them bond and surety.' It is well settled that in the construction of statutes the word 'may' will be construed synonymous with 'shall' where public interests and rights are concerned, and where the public or third persons have a claim *de jure* that the power should be exercised. *Nave v. Nave* (1855), 7 Ind. 122; *Bansemmer v. Mace* (1862), 18 Ind. 27, 81 Am. Dec. 344; *City of Madison v. Smith* (1882), 83 Ind. 502; *Zorn v. Warren, etc. Paving Co.* (1908), 42 Ind. App. 213, 84 N.E. 509. The statute provides that the deputies of county treasurers 'shall take the oath of their principals and may perform all the duties of such principals.' Secs. 9158, 5159, *supra*. We know as a matter of common knowledge that such deputies, as a rule, receive and disburse public funds, and in some instances, as appears in the case at bar, have practically the entire control of the office. The funds thus entrusted to such officials are not the private funds of their superiors, but public funds, in which every taxpayer has an interest. The public is therefore concerned as to its safety, and has a right to demand that the officer primarily charged with the duty of receiving and disbursing such funds shall take every precaution to prevent its loss or impairment which the law provides. It is not a sufficient answer to say that the law makes the treasurer and his sureties responsible for the official acts of his deputies. That is merely one provision made for the safety of public funds entrusted to them, and may as a rule suffice for such purpose, but it is entirely within the realm of possibility that,

where a deputy treasurer becomes a defaulter, his principal and sureties might all prove to be insolvent. The public, having a direct interest in the funds, has a right to demand not only that one precaution provided by statute be taken for their safety, but that every precaution so provided be taken."

Your precise question is answered in 22 R.C.L., page 587 in the following language:

"A public officer who handles public funds may or may not, as he pleases, take security from the deputies for the faithful discharge of their duties in regard to such moneys. Every bond demanded of and taken from a deputy for the faithful discharge of his duties is an official bond, and is subject to the same rules as other official bonds. Where the principal officer has himself given a bond, those aggrieved by the acts of his deputies within the scope of their authority may recover on such bond. For example it has been held that where a deputy sheriff kills a person under the mistaken belief that he is a felon for whose arrest the deputy has a warrant, and that the killing is necessary to prevent his escape, the sheriff is liable on his bond. But the sureties of the deputy are not amenable beyond default of such deputy in his official duties."

#### CONCLUSION

The statutes do not require a deputy to give bond to his principal and we are not able to locate any decision in this state regarding the matter; however, we are of the opinion that you may, if you so desire, exact of your deputy a reasonable

bond for the faithful performance of his duties and the accounting of all funds in his hands as deputy circuit clerk.

Respectfully submitted,

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APPROVED:

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ROY McKITTRICK,  
Attorney General.

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