

PROBATE JUDGE:

Probate Judge acting as exofficio clerk
required to give bond as such

3-11

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Emsley C. James
Judge of Probate Court
Clinton County
Plattsburg, Missouri

Dear Judge James:

This will acknowledge receipt of your request
for an opinion which reads as follows:

"In the matter of bond for
Probate Judge in this County
I have filed bond under the
law as required. But in
this county the Judge does
not hire a clerk, he is his
own clerk by virtue of law,
Ex-officio. In this County
the salary run about \$1200.00
which is below the amount allow-
ed to be retained. Now am I re-
quired to give bond as Ex-officio
Clerk separate to the bond given
by the Judge. In this County the
Clerk's duties are entirely
ministerial."

Under the provisions of Section 11782, Revised
Statutes Missouri 1929, a Judge of Probate Court is required
to give a bond before collecting or being authorized to col-
lect any fees whatsoever, said section reads, in part, as
follows:

"* * * * * Every probate judge
shall before collecting, or being

authorized to collect, any fees whatsoever, give a good and sufficient bond in a penal sum, which, in counties of less than one hundred and fifty thousand inhabitants, shall be equal to the compensation of a circuit judge in such county, and which in counties of over one hundred and fifty thousand inhabitants shall be in a penal sum of double such compensation of a circuit judge in such county; every such bond shall have good and sufficient sureties, to be approved by the said clerk of the circuit court having jurisdiction in such county, and shall be filed with such clerk,* * * * *

Under the provisions of Section 2049, Revised Statutes Missouri 1929, a probate judge who acts ex officio as his own clerk is required to give a bond in like amount with like conditions and penalties, the same as is required of clerks filling said office by appointment. Said section provides, in part:

"The judge of probate is required to act ex officio as his own clerk, and give bond in like amount, with like conditions and penalties, to be approved by the judges of the county court, filed and recorded, the same as is required of clerks filling said office by appointment; Provided, that any judge of probate may, by an entry of record in said court, appoint a separate clerk, who shall be paid by said judge and shall hold his office at the pleasure of the judge. Said clerk shall take the oath required of other clerks of court in this state, and, before entering upon the duties of his office, shall enter into a bond to the state of Missouri, with two or more good and sufficient sureties,

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to be approved by the judge, in the sum of one thousand dollars, conditioned that he will faithfully discharge all the duties of his office; which bond shall be filed and recorded in the office of the county clerk of the county where such clerk of probate is to serve, upon which bond, when breach thereof is made, suit may be brought as upon other penal bonds; * * * * *"

In view of the above it is the opinion of this Department that a probate judge is required to give bond, as Judge, under the provisions of Section 11782, and he is also required, when he acts as ex officio clerk, to give a bond, as such clerk, under the provisions of Section 2049, supra.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

JET:LC