

RECORDER OF DEEDS: Loss by theft of county funds on account of burglary.

February 10, 1940

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



Dear Sir:

We are in receipt of your request for an opinion, dated February 7, 1940, which reads as follows:

"A robbery in the Recorder's office which occurred on Saturday or Sunday night has raised a question as to whom will be liable for the fees which were stolen.

I realize that I am ordinarily responsible for fees in my office but where I have money in the vault and burglars prize the vault and safe doors open at night and take the money, I question whether I would be responsible to the County for same. I of course make bank deposits during the month but I was caught with over one hundred dollars on hand.

The County Clerk's office was broken into in the same manner the same night, but he didn't have any money in his vault.

I know that the County Court would like to help me in this matter if they feel that they have a right to do so.

I will thank you for an opinion as soon as you can render same."

In the case of State ex rel. The Township v. Powell, 67 Mo. 395, the court quoted with approval the following statement of law as declared in the case of United States v. Prescott, 3 How. 578:

"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."

It will be noted that this excerpt was taken from an opinion wherein the funds had been feloniously stolen, and was a case on all fours with the situation as set out in your question.

In tracing the authorities, we find that in the case of University City v. Schall, 205 S. W. (2d) 631, l. c. 633, the aforesaid cited case was approved by the court. Also, the same was approved in City of Fayette v. Silvey et al., 290 S. W. 1019.

In the case of Glaze ex rel. Board of Supervisors of Harrison County Drainage District v. Shumard, 54 S. W. (2d) 726, l. c. 728, 227 Mo. App. 434, the court, in opinion, had this to say:

"Since it is well settled that a public officer is an insurer of public funds which he has lawfully received, unless the legislature has provided otherwise, \* \* \* the depositing of such funds by the county treasurer and ex officio collector, to his account as county treasurer in the Bethany Savings Bank, was at his peril."

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The Court also cites with approval University City v. Schall, supra; Bragg City Special Road District v. Johnson, 323 Mo. 990, 20 S. W. (2d) 22; Butler County v. Boatmen's Bank, 143 Mo. 13, 44 S. W. 1047.

It is indeed a regrettable situation with which you are confronted, but, upon examination of the foregoing authorities, as laid down in the case of State ex rel. Township v. Powell, supra, clear down to the present date, the courts have, without exception, held that county officers are liable for the moneys that are placed in their hands in their official capacity.

Therefore, in conclusion, it is the opinion of our department that you, as recorder of deeds for the county of Ray, are liable for the moneys that were taken from you through the burglarizing of the vault in which you had said moneys.

Respectfully submitted,

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General

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