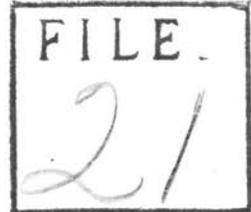


OFFICERS: County collector liable for loss in  
burglary or holdup.

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March 19, 1942

Hon. George O. Dalton  
Collector of Marion County  
Hannibal, Missouri



Dear Sir:

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

"It is the practice in this County for  
the County Collector to purchase Burglary  
and Holdup Insurance to protect the funds  
which he collects and banks as Collector  
for the various Political subdivisions.

"Will you please advise me of the County  
Collector's liability in case of the burg-  
larizing or the holdup of the Collector."

Under the Section 11056 R. S. Missouri, 1939, the  
collector is required, before entering upon the duties  
of his office, to give a bond.

Under Section 11098 R. S. Missouri, 1939, the collec-  
tor is required to file with the county clerk a detailed  
statement, verified by affidavit, of all taxes collec-  
ted during the preceding month. This statement should  
be made monthly and he should pay the money, less his  
commissions, into the state and county treasuries.

Section 11098, supra, does not contain any ex-  
ceptions as to burglary and robbery, and for that reason  
the full amount must be paid into the county treasury.

The county collector is an insurer of the money collected by him. It was so held in the case of City of Fayette v. Silvey, 290 S. W. 1019, Par. 2, where the court said:

"\* \* \* 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; Thomsen 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."

March 19, 1942

This case was followed in the case of First National Bank in St. Louis v. West End Bank, 129 S. W. (2d) 879, l. c. 883, where the court said:

"\* \* \* Until he settled with the City, it was in the sole custody of the collector and he was, under the statutes relating to cities of the fourth class, entitled to keep it where he saw fit; he and his bondsmen being liable as insurers for failure to account therefor and pay over at the proper time. City of Fayette v. Silvey, Mo. App., 290 S. W. 1019. \* \*"

CONCLUSION.

In view of the above authorities, it is the opinion of this department, that the county collector is liable for all money collected by him as taxes, and it should be paid monthly into the county treasury. He and his sureties are liable on their bond, even if the money is lost in a burglary or holdup.

Respectfully submitted

APPROVED:

W. J. BURKE  
Assistant Attorney General

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ROY McKITTRICK  
Attorney General of Missouri

WJB:RW