

PROBATE JUDGES:

MAGISTRATES:

Probate judge and ex-officio magistrate in county of 30,000 inhabitants or less, files his official bond as prerequisite to qualifying for probate judge. Premium due on such bond is to be paid by County Court only when such bond is a surety bond authorized by the county under the provisions of Sec. 3238, R.S. Mo. 1939. Cost of such bond not to be paid out of State Magistrate fund.

February 28, 1949.

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Honorable G. I. Hoy
Judge of the Probate Court
Crawford County
Steelville, Missouri

Dear Judge Hoy:

Further replying to your letter of recent date, this department renders its opinion touching the second inquiry contained in your letter, the pertinent part of such letter reading as follows:

"* * * I should like to be advised whether or not it is incumbent upon me as Probate Judge of Crawford County to pay the premium on my bond of \$2000.00 imposed upon me, or whether that is to be paid out of the state funds."

Records of the Secretary of State's Office disclose that Crawford County is in the fourth class of counties in Missouri, with a population of less than thirteen thousand inhabitants.

We direct your attention to Section 18, Article V, of the Constitution of 1945, which provides for the magistrate courts, and which, in part, reads as follows:

"There shall be a magistrate court in each county. In counties of 30,000 inhabitants or less, the probate judge shall be judge of the magistrate court * * *."

The effect of the constitutional provision just referred to is to combine the offices of probate judge and magistrate in counties with 30,000 inhabitants or less, and to invest one person with the duty and authority to perform the functions of both offices. That one person shall be the probate judge. In

this regard, the wording of the Constitution is clear and unambiguous

Section 13404, Laws of Missouri 1947, Vol. II, p. 356, provides that the judge and clerk of the probate court in counties with 30,000 inhabitants, or less, shall give a separate, good and sufficient bond in a penal sum of \$2000.00. This law does not provide that the cost of such bond shall be paid by the county. The bond is given as a condition precedent to the right of the judge of the probate court to enter upon his duties as such official, and is provided for in the law covering salaries and fees of probate judges. No provision has been found, in the law governing magistrate courts, which would require the probate judge, as ex-officio magistrate in counties of 30,000 inhabitants, or less, to enter into a separate and additional bond before carrying out his duties as such magistrate.

Section 2811.123, Mo. R.S.A. (Laws 1947, Vol. I, p. 243), provides for a state magistrate fund, but it is therein provided that such fund shall be used exclusively for the payment of salaries of magistrates, their clerks, deputies and employees, and for the payment of the cost of surety bonds furnished by a clerk or deputy clerk. A reading of this section discloses that a magistrate, as such, is not within the purview of the clause covering costs of surety bonds.

Having determined that the only bond required of the judge of the probate court, and ex-officio magistrate, in a county of 30,000 inhabitants or less, is that provided for in section 13404, Laws of Missouri 1947, Vol. II, p. 356, and that such law does not obligate the county to pay for same, we must find authority in another statute if we are to obligate the county for such an expenditure. Otherwise, the official must bear the cost of a surety bond if he chooses to file such a bond.

Attention is directed to Section 3238, R.S. Missouri 1939, which provides as follows:

"Whenever any officer of this state or of any department, board, bureau or commission of this state, or any

deputy, appointee, agent or employee of any such officer; or any officer of any county of this state, or any deputy, appointee, agent or employee of any such officer, or any officer of any incorporated city, town or village in this state, or any deputy appointee, agent or employee of any such officer; or any officer of any department, bureau or commission of any county, city, town or village, or any deputy, appointee, agent or employee of any such officer, or any officer of any district, or other subdivision of any county, or any incorporated city, town or village, of this state, or any deputy appointee, agent or employee of any such officer, shall be required by law of this state, or by charter, ordinance or resolution, or by any order of any court in this state, to enter into any official bond, or other bond he may elect, with the consent and approval of the governing body of such state, department, board, bureau, commission, official, county, city, town, village, or other political subdivision, to enter into a surety bond, or bonds, with a surety company or surety companies, authorized to do business in the state of Missouri, and the cost of every such surety bond shall be paid by the public body protected thereby."

The statute just quoted was construed in the case of *Berry v. Linn County*, 195 S.W. (2d) 502, 355 Mo. 191. The Supreme Court of Missouri disclosed the intent and purpose of this statute

Honorable C. I. Hoy

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in the following language:

"The intent of Section 3238 is clear. It provides when an officer chooses to give a surety company bond, the cost of it shall not be imposed on the county unless the county agrees."

The language used in *Berry v. Linn County*, supra, discloses the rule to be followed in disposing of the question at hand.

CONSLUSION

It is the opinion of this department that the cost of the penal bond required of a judge of the probate court, and ex-officio magistrate in a county of 30,000 inhabitants or less, is to be borne by the county only in the event a surety bond is required by the county court pursuant to authority contained in Section 3238, R.S. Mo. 1939, and that the cost of such bond is not to be paid out of the State magistrate fund.

Respectfully submitted,

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APPROVED:

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