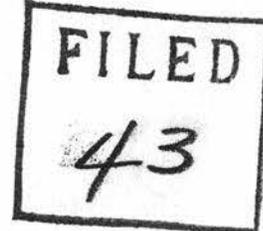


BONDS:
OFFICERS:
CIRCUIT CLERKS:
RECORDER OF DEEDS:

In counties of fourth class circuit clerk and ex officio recorder of deeds must give two separate and distinct bonds and cannot give one bond conditioned upon the faithful performance of his duties in both offices.

January 31, 1951

2-3-51



Honorable William L. Hungate
Prosecuting Attorney
Lincoln County
Troy, Missouri

Dear Mr. Hungate:

Your recent opinion request reads in part as follows:

"This is a 4th class county and the Circuit Clerk is ex-officio recorder of deeds. As I read the statutes the Clerk gives a bond of at least \$5,000.00 or more to be set and approved by the Circuit Judge, and then before he can act as recorder he should give a bond of from \$1,000.00 to \$5,000.00 as determined and approved by the County Court.

"The practice has been for the Clerk to give one bond for \$6,000.00 written for the Circuit Clerk and ex-officio Recorder of Deeds. There is nothing in this to indicate what amounts are set aside for each office. Apparently they believe they are giving the \$5,000.00 minimum bond as Clerk and \$1,000.00 minimum as Recorder although this is not spelled out in the bond.

"Can one bond be prepared to cover both offices? Would this bond be considered as covering both offices? Kindly advise the proper steps required to be in compliance with the statutes on bonds for both of these offices."

Lincoln County is a county of the fourth class. Circuit clerks of counties of the fourth class also act as ex officio recorders as provided for by Section 59.090, RSMo 1949 as follows:

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"In all counties of the fourth class, the clerks of the circuit court shall be ex officio recorder for their respective counties. (L. 1945 p. 1424 Sec. 13147b)"

Section 483.025, RSMo 1949 which is included in the provisions applicable to all clerks of courts of record provides 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, except as otherwise provided by law, 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. * * * *"

Section 59.100, RSMo 1949 which is applicable to clerks of the circuit court who are ex officio recorders provides as follows:

"Every clerk, before entering upon the duties of his office as recorder, shall enter into bond to the state, in a sum not less than one thousand dollars nor more than five thousand dollars at the discretion of the county court, with sufficient sureties, to be approved by said court, conditioned for the faithful performance of the duties enjoined on him by law as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to his successor. (13150)"

As provided above the circuit clerk and ex officio recorder must provide a bond conditioned upon the faithful performance of his duties as circuit clerk and also a bond conditioned upon the faithful performance of his duties as ex officio recorder. It would seem that since two distinct

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statutes have been enacted requiring a bond for the faithful performance of the duties of each office, one bond could not be prepared to cover the required bond for each office. The approval of the bond conditioned upon the faithful performance of the duties of the office of circuit clerk must be approved by the court of which he is clerk, whereas the bond required of him as ex officio recorder is to be approved by the county court. In view of this it must be concluded that it was the intent of the legislature that two separate and distinct bonds were required.

This question has never been presented to the courts of this state. However, it has been ruled upon by the Supreme Court of California in the case of People v Ross, 28 Cal. 76. In this case the statute enacting and organizing the county of Kern provided that the sheriff of the county shall also be ex officio tax collector. The court stated at l.c. 77, 78, that:

"The offices of Sheriff and Tax Collector of Kern County, though held by the same person, are, nevertheless, separate and distinct offices. (Lathrop v. Brittain, 30 Cal. 680.) In the absence of any statute expressly providing that one official bond only shall be required of a person who holds both offices, and that such bond shall be for the faithful performance of the duties of both offices, a separate bond for each office is as much required as if they were held by different persons. (People v. Love, 25 Cal. 520.)"

"* * * * * As was said in the case of the People v. Edwards, the offices are not so blended that the bond executed for the faithful performance of the duties appertaining to the one would embrace, in the absence of a statute to that effect, the obligations belonging to the other. * *
* * *"

Therefore it is our opinion that since the duties of the officer in question as circuit clerk are separate and distinct

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from his duties as ex officio recorder and since the bond required of him as circuit clerk is provided for by a statute entirely separate and distinct from that statute requiring his bond as ex officio recorder and since the bond required as circuit clerk must be approved by the circuit court while the bond required as ex officio recorder must be approved by the county court, two separate and distinct bonds were contemplated and provided for by the legislature. Therefore no one bond could be given covering both offices as statutory authority therefor cannot be found.

CONCLUSION

It is therefore the opinion of this department that in counties of the fourth class, the circuit clerk and ex officio recorder must give two separate and distinct bonds, one conditioned upon the faithful performance of his duties as circuit clerk and another conditioned upon the faithful performance of his duties as ex officio recorder.

Respectfully submitted,

RICHARD H. VOSS
Assistant Attorney General

APPROVED



J. E. TAYLOR
Attorney General

RHV:ba