

**MAGISTRATES:** If one person holds both the offices of clerk of the probate court and clerk of the magistrate court he must file two bonds as required by Senate Bill 200 and Senate Bill 207 of the 63rd General Assembly.

January 16, 1947



1/23

Honorable Walter A. Eggers  
Judge of the Probate Court  
Perry County  
Perryville, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion from this department, reading in part as follows:

"Section 21 of SB 207 provides that the clerk of the magistrate court enter into bond in the sum of \$1,000.00.

"Section 2440 RS 1939 provides that the clerk of the probate court enter into a bond in the sum of \$1,000.00.

"If John Doe is appointed clerk of the magistrate court and also clerk of the probate court must he file two bonds?"

Section 21 of Senate Bill 207 of the 63rd General Assembly reads in part as follows:

"\* \* \* Before entering upon the duties of his office, the clerk and deputy clerk shall enter into a bond to the State of Missouri, with good and sufficient sureties, to be approved by the magistrate, in the sum of \$1,000.00, conditioned that he will faithfully discharge all of the duties of his office; which bond shall be filed and recorded in the office of the county clerk of the county. \* \* \*"

Section 13404 of Senate Bill 200 of the 63rd General Assembly, reads in part as follows:

"Every judge and clerk of the probate court shall, before entering upon the duties of their respective offices, give a separate, good and sufficient bond which, in counties now or hereafter having the following number of inhabitants, shall be in a penal sum as follows:

- (1) in counties with 30,000 inhabitants or less, the sum of \$2000.00,
- (2) in counties with more than 30,000 and less than 70,000 inhabitants, the sum of \$3000.00,
- (3) in counties with more than 70,000 and less than 250,000 inhabitants, the sum of \$5000.00,
- (4) in counties with more than 250,000 inhabitants, the sum of \$10,000.00.

Such bonds shall be approved by the clerk of the circuit court having jurisdiction in such county, and shall be filed with such clerk. Every such bond shall run to the state or county to which the fees herein provided for are payable and shall be conditioned respectively upon the faithful performance by such judge or clerk of each and every the duties hereinabove imposed upon such respective officers."

It should be noted that each bond is conditioned upon the faithful performance of the duties of the respective office by each clerk. In other words, the bond given by a clerk of the probate court is required to be conditioned only on the performance of the duties of his office, and the bond given by a clerk of the magistrate court is required to be conditioned only on the performance of the duties of his office.

Where one person holds two distinct offices and a bond is required for each, he must file both bonds. We quote from

46 C. J., Section 396, page 1067:

"Where an officer holds two distinct offices, although one is held ex officio, a bond given for the faithful performance of one office does not cover his liability for his acts in the other office, especially where an additional and totally distinct bond is required for the faithful performance of such other duties, even though such additional bond is not in fact given; \* \*"

In the quotation above, it even goes so far as to say that if a man holds two offices, although the one is held ex officio, that a bond for the faithful performance of one office does not cover his liability for acts in the other. The General Assembly has also followed this policy in that it has required the person holding the office of treasurer and ex officio collector in township organization counties, to provide one bond to cover the liability for his acts as treasurer and another bond to cover the liability for his acts as collector (Sections 13795 and 13994, R. S. Mo. 1939).

It seems to us from the above that the bond required is primarily for the faithful performance of the duties of the particular office and that for this reason the General Assembly has deemed it advisable to require a specified amount for each office.

#### Conclusion

Therefore, it is the opinion of this department that if one person holds both the offices of clerk of the probate court and clerk of the magistrate court, then he must file two bonds as required by Senate Bill 200 and Senate Bill 207 of the 63rd General Assembly.

Respectfully submitted,

APPROVED:

PERSHING WILSON  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

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