

PUBLIC FUNDS:

A custodian of public funds is liable as an insurer for any loss thereof.

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Mr. John C. Kibbe  
Prosecuting Attorney  
Moniteau County  
California, Missouri

Dear Mr. Kibbe:

We are in receipt of your recent request for an official opinion, which request is as follows:

"On the request of the Presiding Judge of the County Court, I am requesting your office for an advisory opinion based on the following set of facts:

"1. On January 9th, 1951, the office of the County Collector was broken into, and over \$200.00 was stolen. The criminal or criminals have never been apprehended.

"2. The front door of the building was forced, as was the door to the Collector's office. Both had been locked. The safe was forced open. It too had been locked. The safe was furnished to the Collector by the County Court, and had a rating as being fireproof, but none as to being burglar-proof.

"3. The bank here in California closes at 3 P.M., and most of the money which was stolen probably could have been banked. It has been the practice of the Collectors here, however, to rely on the safe furnished by the County.

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"Who is to bear the loss, the Collector individually, the sureties on his bond, or the County?"

The question here to be determined concerns the extent of liability imposed upon a custodian of public funds. The Supreme Court of Missouri in 1878 handed down a ruling on this point in the case of State ex rel. v. Powell, 67 Mo. 395. In the course of that opinion the court said:

"Public officers, however, are universally held to a more rigorous accountability than simple trustees for the public funds committed to their keeping; and though, in a general sense, they may be said to be bailees, still they are bailees who are subject to special obligations for the benefit of the public, and the degree of their responsibility is not to be determined by the ordinary law of bailment. In the United States v. Prescott, 3 How. 578, a leading case on this subject, it was pleaded to a suit on an official bond that the funds had been feloniously stolen, taken and carried away without any fault or negligence on the part of the officer, and the court, holding the plea insufficient, said: 'Public policy requires that every depository 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.'"

The Supreme Court in 1881 sustained this principle in State ex rel. v. Moore, 74 Mo. 413. The court held that the loss of county funds through the failure of a bank in which they were deposited would not relieve the treasurer from liability to account for them; and this was held to be true notwithstanding the treasurer, before placing said funds in said bank, assured himself by strict inquiry that the institution was safe and solvent.

The Kansas City Court of Appeals in 1927 upheld this doctrine in Fayette v. Silvey, 290 S. W. 1019. In the course of that opinion the court said:

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"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; Thomssen 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."

It is the law that a public official intrusted with the custody of public funds is under strict accountability and must safely keep and pay over all such funds according to law. He takes the position of an insurer and must account for all moneys received by him. He must make good all losses, and this holds true when losses occur through no fault of his. His liability is not qualified by caution or good conduct in office.

The sureties on the bond of a county collector undertake to guarantee "that he will faithfully and punctually collect and pay over all state, county and other revenue" for the full term of his office. Section 52.020, RSMo 1949. Under this obligation the sureties are bound to the same extent as the collector is. They are liable for any loss of public funds that may occur during the period covered by the bond.

#### CONCLUSION

It is the opinion of this department that in the case now under consideration the Collector of Moniteau County is liable and should bear the total loss of moneys stolen from his office on January 9, 1951. If for any reason he should default, the sureties on his bond could be held to make good the loss.

Respectfully submitted,

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APPROVED:

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