

SHERIFF'S LIABILITY FOR
MONEY OR PROPERTY:

The Sheriff of Jasper County is liable for any moneys stolen from him which came into his hands in the course of his discharge of the duties of his office whether such funds were public or private.

September 9, 1959



Honorable William C. Myers, Jr.
Prosecuting Attorney, Jasper Co.
Miners Bank Building
Joplin, Missouri

Dear Sir:

On August 14, 1959, you wrote to this office for an official opinion as follows:

"This office requests an opinion from your office as to the standard of care to which the Sheriff is to be held for money which is taken from his custody.

"Is the Sheriff to be an insurer of monies collected by him or is he accountable only for his negligent acts in keeping said money? Is the Sheriff's duty any different with respect to monies which he collects as fines, penalties, and forfeitures pursuant to an order, judgment or decree of a court of record or those monies collected by him through other civil processes. If the Sheriff is not an insurer of funds he has collected and there is no negligence on his part in the disappearance of said funds, then who is liable to persons who have a claim on the funds collected by the Sheriff?

"Section 57.130, Missouri Revised Statutes 1949 provides in part that the Sheriff 'shall collect and account for all fines, penalties, forfeitures, etc.' and Section 57.140 provides that 'all monies collected by the Sheriff shall be paid to the Plaintiff, etc.' Section 57.370 makes it the duty of the Sheriff to collect fees in criminal matters and pay them over to the County Treasurer.

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"I can find no section which states the degree of care to which the Sheriff is to be held if he cannot account for monies which he has collected."

On the same date you wrote further in this regard as follows:

"The occasion which gave rise to our requesting an opinion on the above occurred on or about the 5th day of August, 1959.

"On this particular date the Sheriff's office in the Courthouse Building in Joplin, Missouri, was broken into and a safe burglarized; there was approximately \$414.00 in cash taken from the Sheriff's safe. This money was money which the Sheriff had collected through ordinary civil process and pursuant to orders and judgments of the Court."

In this situation it is obvious that there is no question involved regarding malfeasance or misappropriation of funds by the sheriff. The issues which are present relate, as you state in your letter, to the questions of the degree of care which is required of a sheriff when he has money and/or property in his possession which come to him in his official capacity, and the further question as to whether the sheriff is the insurer of such funds and, as suggested by you, whether the liability of the sheriff is any different with regard to moneys which come into his hands from different sources for different purposes.

We believe that there is a distinction to be made between the kinds of money and property which come into a sheriff's hands, and that this distinction is to be made upon the basis of "public funds" and "private funds." We believe that this distinction is to be made because all funds which come into a sheriff's hands are not "public", as will be made plain subsequently, and hence it would seem that all funds which are not "public" must necessarily be "private."

However, we shall not make any attempt to define "public" and "private" funds because we believe that the liability of the sheriff is the same for both.

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With regard to "public funds" we direct attention to an opinion, a copy of which is enclosed, rendered by this department on January 30, 1951 to John C. Kibbe, Prosecuting Attorney of Moniteau County, which opinion holds that a custodian of public funds is liable as an insurer for any loss thereof. You will note in this opinion two cases are cited, the second of which was decided by the Kansas City Court of Appeals in 1957. This was the case of *Fayette v. Silvey*, 290 SW 1019, in which the Kansas City Court of Appeals held that a public officer was an insurer of public funds lawfully in his possession.

In regard to the liability of the sheriff in the case of "private" funds, we direct attention to the case of *State v. Gatzweiler* 49 Mo. 17. In this case there was an action on the official bond of the defendant as sheriff of St. Charles County. The petition averred that an execution was placed in the hands of the sheriff for the sum of \$15,000 with interests and costs, and that because of circumstances which we need not here set forth, the defendant sheriff would not pay over the entire sum which he realized from the execution sale because he was restrained and prevented from doing so by agencies which it was beyond his power to control. Nonetheless, the Missouri Supreme Court held that the sheriff was liable for this sum. The Court in this regard stated (l.c. 26):

"The defendant's bond was conditioned to discharge the duties of the office of sheriff according to law. It is well established that a public officer who is required to give bond for the performance of his duties, and the proper payment of moneys that may come into his hands as such officer, is not a mere bailee of the money, exonerated by the exercise or ordinary care and diligence. His liability is fixed by his bond, and no parting with the money, or loss either by theft, robbery or otherwise, will release him from his obligation to make payment. (*United States v. Prescott*, 3 How. 578; *Muzzy v. Shattuck*, 1 Denio, 233; *Hancock v. Hazard*, 12 Cush. 112; *Commonwealth v. Comly*, 3 Penn. St. 372; *State v. Harper*, 6 Ohio St. 607; *Halbert v. The State*, 22 Ind. 125.) The duty of the sheriff is to pay over money coming into his hands to those legally entitled thereto, and his bond is the contract that he will not fail upon any account to do this act."

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CONCLUSION

It is the opinion of this department that the Sheriff of Jasper County is liable for any moneys stolen from him which came into his hands in the course of his discharge of the duties of his office whether such funds were public or private.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW/mlw
Enclosure