

SECRETARY OF STATE:  
CIRCUIT CLERK'S  
BOND:

Secretary of State has no authority to  
return bond filed in accordance with  
statute.

December 27, 1943

FILED

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Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Brown:

Under date of December 16, 1943, you wrote this office requesting an opinion upon the question of your authority as Secretary of State to comply with a request of Mr. Hollis Stockdale, Clerk of the County Court of Barton County, which request of Mr. Stockdale is as follows:

"The Statutes of Missouri require that the Bond of the Circuit Clerk be first recorded in his county, and then deposited with the Secretary of State.

"One Lee VanPelt was clerk of the circuit court of this county from January 1, 1931, until December 31, 1938, inclusive.

"On January 1, 1935, the United States Fidelity and Guaranty Company executed its certain bond, No. 38072-07-18-35 the sum of \$5000, on behalf of Lee VanPelt, circuit clerk of Barton County, Missouri.

"On August 4, 1943, the State Auditor filed his audit with the county clerk of this county. This audit showed discrepancies in the accounts of the said Lee VanPelt. After due study of this report by the county court, the county clerk, the prosecuting attorney, the present circuit clerk, and an attorney for the

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surety it was determined that a good part of said discrepancies were carried into said audit from a previous audit given in the Fall of 1937; that a great amount of these discrepancies were carried over from said Lee VanPelt's first term, which ended December 31, 1936, and were outlawed before the time the 1942 audit was presented to this county court on August 4, 1943; that a previous county court had failed to direct the surety's attention to any discrepancies.

"Therefore, in a regular session of the Barton County Court on December 6, 1943, the said county court adopted a resolution and made it part of the minutes of said session to accept the sum of \$250, and signed a release and also an assignment of Barton County's interest in and to such claims against Lee VanPelt.

"We have everything but the Bond mentioned heretofore, in this letter. We must have that Bond to return to the surety along with other documents in order that we might receive the \$250.

"Will you please give this your immediate attention."

Section 13285, R. S. Missouri, 1939, provides for the giving of a bond by circuit clerks. This section is 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, 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

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court, in vacation. The bond shall be conditioned that he will faithfully perform the duties of his office, and pay over all moneys which may come to his hands by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undamaged, all books, records, papers, seals, apparatus and furniture belonging to his office."

Section 13287, R. S. Missouri, 1939, provides for the filing of the bond of a circuit clerk with the Secretary of State. This section is as follows:

"The certificate of the election of any clerk, signed by the presiding judge of the county court, and the bond of every clerk, shall be deposited in the office of the secretary of state, with the approval of the court or judges indorsed thereon."

Section 13290, R. S. Missouri, 1939, is also pertinent:

"All bonds of clerks and recorders of deeds shall be recorded in the recorder's office in their respective counties, and then deposited in the office of the secretary of state."

By the provisions of Sections 5229 and 5906, R. S. Missouri, 1939, it is permissible to use a surety company bond where bonds are required to be given.

In connection with these statutes it is desired to call to your attention brief statements of fundamental law taken from Volume 46 of Corpus Juris, pp. 1031-2, par. 287:

"The powers and authority of public officers are fixed and determined by the law. \* \* \* \*

"In addition to powers expressly conferred upon him by law, an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may be fairly implied therefrom. \* \* \*"

As the bond of a circuit clerk is required to be filed with the Secretary of State, the Secretary of State has the power to do all things necessary to preserve and safely keep the bond which is filed. There is no authority conferred upon the Secretary of State by any of the above mentioned sections of the statutes, which are the only ones relating to the filing of circuit clerks' bonds with the Secretary of State, to return to the surety a bond which has been properly filed with him. By reason of this fact, it would seem that the Secretary of State would not have power to return to the surety the bond requested in the letter of Mr. Stockdale.

In addition to what has just been said, the bond given by the circuit clerk is for the faithful performance of the duties of his office, for the proper accounting of all funds coming into his hands, and the turning over of the books, papers and property of his office to his successor. Under a bond of this nature there would exist a possibility that some other claim against the bond might arise as the statutory period of limitation has not yet expired. The settlement of one small claim for one failure to properly administer the office would not discharge the liability on the bond.

#### CONCLUSION

It is the conclusion of the writer that you, as Secretary of State, have no authority to comply with the request

Honorable Dwight H. Brown

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of Mr. Stockdale to return the bond of Lee VanPelt as Clerk  
of the Circuit Court of Barton County.

Respectfully submitted

W. O. JACKSON  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

WOJ:HR