

PROBATE AND MAGISTRATE COURTS: Bonds of Magistrate and Probate Judges and clerks; necessary to furnish bond for each office held, except Magistrate Judge.

January 23, 1947



Honorable Edwin E. Douglas  
Prosecuting Attorney  
Polk County  
Lolivar, Missouri

Dear Sir:

This will acknowledge your recent request for an opinion, based on the following facts:

"Polk County is a county of more than 17,000 population and less than \$4,000,000.00 assessed valuation.

"In such a county does the Probate Judge (who is also Ex-Officio Magistrate Judge of the County) still give the bond required of probate judges under Section 13404, R.S. 1939?

"Is he still Ex-Officio Clerk of Probate and required to give an additional bond as such as required under Section 2440, R.S. 1939?

"If the Probate Judge names and designates his Clerk of the Magistrate Court as Clerk of the Probate Court, as I understand he can under Senate Bill 207, Section 22, does this alter the situation and would this change your opinion?

"If he does so designate his Magistrate Clerk as Clerk of Probate, will the Clerk give an additional bond as such Probate Clerk as provided for in Section 2440, R.S. 1939, to be given by the probate judges as ex-officio clerks of probate?"

Polk County has a population of 17,400, an assessed valuation of \$12,305,369, and is a county of the third class.

Section 13404, R.S. No. 1939, was amended by Senate Committee Substitute for Senate Bill No. 200, and provides for a bond for probate judges and clerks 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,

\* \* \* \* \*

"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."

Section 2440, R.S. No. 1939, requiring the probate judge to act ex officio as his own clerk, has not been amended and the requirements of a bond are still in force. Said section is, in part, as follows:

"The judge of probate is required to act ex officio as his own clerk, and give bond in like amount, with like conditions and penalties, to be approved by the judges of the county court, filed and recorded, the same as is required of clerks filling said office by appointment: Provided, that any judge of probate may, by an entry

of record in said court, appoint a separate clerk, who shall be paid by said judge and shall hold his office at the pleasure of the judge. Said clerk shall take the oath required of other clerks of court in this state, and, before entering upon the duties of his office, shall enter into a bond to the state of Missouri, with two or more good and sufficient sureties, to be approved by the judge, in the sum of one thousand dollars, conditioned that he will faithfully discharge all the duties of his office; \* \* \* \*"

In the case of a magistrate clerk being appointed clerk of the probate court, said clerk would be required to give two bonds, one as clerk of each court. Senate Committee Substitute for Senate Bill No. 200, supra, provides the requirements as to being probate clerk. Senate Bill No. 207, Section 21, provides for a bond as a magistrate clerk, to wit:

"In all counties each magistrate shall by an order duly made and entered of record appoint and fix the salary of a clerk of his court and may appoint such deputies and employees as may be necessary for the proper dispatch of the business of his court and fix their salaries at such sum as in his discretion may seem proper. \* \* \* Each clerk of the magistrate court shall take the oath required of other clerks of courts in this State. 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. \* \* \* \*"

As a matter of course, the probate judge would not be required to give bond as ex officio clerk if he appointed a regular clerk.

Section 22 of Senate Bill No. 207 provides for the appointment of the magistrate clerk as clerk of the probate court as follows:

" \* \* \* \* When the judge of the probate court is also judge of the magistrate court, such judge, in his discretion, may designate one or more of such clerks, deputy clerks or employes as clerks, deputies or employes in the probate court."

Briefly, these statutes require a bond for each office, except magistrate judge, even though they be held by the same person.

Conclusion.

It is therefore the opinion of this department that a probate judge must give bond, and he must also give an additional bond when he acts ex officio as his own clerk; that a clerk of the magistrate court must give a bond, and he must also give an additional bond as probate clerk when he acts as such.

Respectfully submitted,

W. BRADY DUNCAN  
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APPROVED:

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J. E. TAYLOR  
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