

1975 WL 29412 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1975

*1 Mr. George Warren, Jr.
County Attorney
Post Office Box 27
Hampton, South Carolina 29924

Dear George:

You have inquired as to what liability, if any, rests upon a magistrate as a result of the theft of cash and documents from the magistrate's office after a break-in occurred in the County Courthouse.

I think that the answer to the question is in [Chandler v. Britton](#), 197 S.C. 303, 15 S.E.2d 344, and in [Spartanburg County v. Mitchell](#), 214 S.C. 283, 52 S.E.2d 266. The matter, in my opinion, revolves on whether or not any negligence on the part of the magistrate is involved. This State has rejected the rule of the common law that a public official is an insurer of funds, and presumably other documents, left in his custody and follows the rule that the official is not liable for the loss of funds deposited with him if he has exercised that degree of care and prudence in the management of the funds which a person of ordinary care and prudence would exercise in his own business. A number of cases seems to give considerable weight to the custom that has been followed in the care of monies and, I presume, documents.

The [Spartanburg](#) case was a case of theft which is very close to your circumstances, if not exactly in point, and establishes that a public official is not an absolute insurer of public funds coming into his custody, but that such public official is liable for public funds lost only through his negligence or failure to exercise due care.

The statute which requires magistrates to deposit fines and penalties 'forthwith' with the County Treasurer has been construed to mean 'within a reasonable time' and the custom that has been established was given consideration in that case also.

It is my opinion that the County officials should make a determination as to whether any negligence on the part of the magistrate existed, and if they can prove that no negligence is shown, I do not feel that any liability could be said to rest upon them. I feel also that this doctrine would extend to documents, such as checks, etc., that have been deposited with the magistrate.

The question generally arises in actions against the public official and his bond seeking recovery, but if the County officials conclude that they cannot show negligence on his part, such action would not appear to be indicated. A third party may attempt to seek relief against the bond, although I feel that its terms do not extend to any except the County and State if the standard bond form has been used and, in any event, a showing of no negligence to the satisfaction of a jury would bar recovery against the official or his bond.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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