

1973 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3462, 1973 WL 20926

Office of the Attorney General

State of South Carolina

Opinion No. 3462

January 22, 1973

*1 The Honorable James Craven

Judge

The Family Court of Charleston County

Post Office Box 56

Charleston, South Carolina 29402

Dear Judge Craven:

We received your letter of December 18, 1972 regarding the liability of a judge for errors or mismanagement of funds by his clerk.

It would appear that a judge would not be liable for errors in the handling of money by his clerk as long as the clerk is not performing a duty that the statutes require the judge to perform and that the judge has subsequently designated to his clerk to perform. In such a situation the clerk is merely performing a duty in the place of the judge and the judge is therefore liable for errors committed by his clerk. See [Rowe v. Johnson](#), 108 So. 604 (1926); [King County v. United Pacific Insurance Company](#), 434 P.2d 554 (1967), 45 C.J.S. Judges § 64 (1947).

The South Carolina statutes pertaining to the family court requires the clerk of court and not the judge to receive money paid into the court. Therefore, our statutes do not place the responsibility of receiving money paid into the court on the judge but on his clerk. Our statutes further provide penalties against the clerk of court for his failure to adequately handle this money.

South Carolina statutes expressly provide that if a clerk of court willfully fails to pay over money that he has received by virtue of his office he is liable. See South Carolina Code of Laws, 1962, Sections 15–1783, 10–2154. Apparently no specific statutory language applies to the effect of a clerk's error in mismanagement of funds. However, South Carolina Code of Laws, 1962, Section 10–2154 states in part:

If any clerk of any such court . . . having received moneys . . . shall refuse or neglect to obey the order of such court for depositing moneys . . . such clerk . . . shall be forthwith proceeded against by attachment for contempt. (emphasis added)

See also South Carolina Code of Laws, 1962, Section 50–4 for the same language, applying forms for failure of the clerk of court in criminal actions who neglects or refuses to pay fines when requested. And South Carolina Code of Laws, 1962, Section 50–6 provides that a clerk of common pleas and general sessions who ‘ . . . willfully fails or neglects to discharge all the duties and perform all the services which are requested of him by law . . . ’ shall be liable to aggrieved party and subject to fine by the court. The language in these statutes would therefore encompass an error by a clerk caused by neglect and expressly places the liability for such neglect on the clerk and not the judge.

If the clerk has misappropriated funds he would not be liable. See [Fort v. Assman](#), 38 S.C. 253 (1892); [State v. Assmen](#), 46 S.C. 554 (1895). Probably barring negligence on the part of the clerk, the clerk would not be liable for loss of funds due to a robbery. 48 C.J.S. Judges § 64 (1947), deals with liability for a judge's conversion or failure to pay funds statutorily intrusted to him by virtue of his office and states he would not be liable when the loss of money was ‘ . . . occasioned by Act of God or the public enemy.’ This would presumably also be applicable to clerks of court.

*2 Therefore, it appears that if a statute specifically makes the judge responsible for an act that he delegates to a clerk to perform, he is liable for the clerk's actions. However, where the statute specifically designates the clerk of court as the proper officer of the court to receive money and provides provisions for his failure to properly execute this function, as South Carolina does, the clerk is liable under the terms of the code for any failure to perform his duties adequately.

I hope this letter answers your inquiry. If we can be of any further assistance, please do not hesitate to contact this office.

Sincerely,

Joseph C. Coleman
Deputy Attorney General

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