

1973 WL 26870 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 30, 1973

*1 Honorable W. H. Dunlap
Clerk of Court
Laurens County Courthouse
Laurens, South Carolina 29360

Dear Mr. Dunlap:

Thank you for your letter of August 17 concerning the possible liability of a Clerk of Court when a judgment roll or other record has been lost, improperly removed, or stolen from the office.

The Supreme Court of this State has recently considered the question of liability of public officials for alleged delicts and the holding of that case, in my opinion, means that public officials, so long as they act without malice, illegality, or bad faith, do not incur the risk of personal liability for their actions. So long as their judgments do not warrant an inference of such conduct, they will not be subject to personal liability, even though such judgments may be incorrect. In the case to which I refer, the word 'judgments' is used in the sense of 'decisions.'

If a public record, such as a judgment roll, is removed from the office illegally and with the consent of a public official or if that public official should conspire to remove it or to permit its removal so as to warrant an inference of malice, illegality, or bad faith, then that official may be subject to liability for his acts, but so long as the official acts without malice, illegality, or bad faith, he will not be held to account for the removal of such records. Inattention to duty, or carelessness in the performance of duty, may present a problem with which the courts of this State have not, to my knowledge, been confronted, but I believe that it would generally come within the scope of the characterizations set forth above, particularly with respect to the exercise of good faith.

There is a growing apprehension among public officials with respect to the risks of personal liability, but it is my view that the courts of this State will not sustain any finding of liability so long as the facts do not warrant an inference of malice, illegality, or bad faith.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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